16-622

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1042.

THE COUNTY OF MADISON, PLAINTIFF IN ERROR,

vs.

THOMPSON M. WARREN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 11, 1882.

SUPREME COURT OF THE UNITED STATES.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of Illinois, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea, which is in the said circuit court of the United States for the southern district of Illinois before you, between Thompson M. Warren, plaintiff, and the County of Madison (in the State of Illinois), defendant, a manifest error hath happened, to the great damage of the said defendant, the County of Madison, as by its complaint appears:

We, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the
2 United States, together with this writ, so that you may have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Springfield, in said district, this 23d day of June, in the year of our Lord one thousand eight hundred and eighty-two, and of our Independence the one hundred and sixth year.

[SEAL.] J. A. JONES,
Clerk, U. S. Cir. Court, South'n Dist. of Ills.

(Indorsed:) Supreme Court of United States. County of Madison, plaintiff in error, vs. Thompson M. Warren. Writ of error. Filed June 23d, 1882. J. A. Jones, clerk.

3 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, district judge of said district, and in the absence of the Hon. Thomas Drummond, judge of the seventh judicial circuit, on Wednesday, the seventeenth day of May, at the January term of said court, in the year of our Lord one thousand eight hundred and eighty-two, and of our Independence the one hundred and sixth year.

J. A. JONES, *Clerk.*

THOMPSON M. WARREN
v.
COUNTY OF MADISON. } Assumpsit.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Thompson M. Warren, a citizen of the State of Wisconsin, plaintiff puts in his place Messrs. Scholes and Mather, his attorneys, against the County of Madison, a body corporate and politic, organized and

4 existing under the laws of the State of Illinois, defendant, who puts in its place J. H. Yager, esq., its attorney, in a plea of trespass on the case upon promises.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the eighteenth day of December, in the year of our Lord one thousand eight hundred and eighty, came said plaintiff, by his said attorneys, and filed in the office of the clerk of the circuit court of said district his bond for costs herein, which said bond for costs is in the words and figures following, to wit:

Bond for costs.

Circuit court United States of America, southern district of Illinois, January term, A. D. 1881, ss.

THOMPSON M. WARREN
vs.
THE COUNTY OF MADISON. } In assumpsit. Damages, $6,000.00.

We do hereby enter ourselves security for costs in this cause, and acknowledge ourselves bound to pay, or cause to be paid, all costs which may accrue in this action, either to the opposite party or to any of the
5 officers of this court, in pursuance of the laws of this State and of the United States.

Dated this 18th day of Dec., 1880.

SCHOLES & MATHER.

(Indorsed:) Filed Dec. 18, A. D. 1880. J. A. Jones, clerk.

And afterwards, to wit, on said eighteenth day of December, of the year aforesaid, a summons was issued in said entitled cause out of the office of the said circuit clerk directed and delivered to the marshal of said district to execute, which said summons, together with the return of the marshal thereto, is in the words and figures following, to wit:

Summons.

Circuit court of the United States of America, southern district of Illinois.

To the marshal of the southern district of Illinois, greeting:

We command you to summon the County of Madison, if found in your district, to be and appear before our judges of our circuit court of
6 the United States for the southern district of Illinois, on the first day of the next term thereof, to be held at Springfield, in the district aforesaid, on the first Monday of January next, to answer unto Thompson M. Warren of a plea of trespass on the case upon promises, to his damage, as he alleges, of six thousand dollars, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this 18th

day of December, in the year of our Lord one thousand eight hundred and eighty, and of our Independence the one hundred and fifth year.

[L. S.] J. A. JONES, *Clerk.*

Executed this writ by reading same and delivering a true copy thereof to H. E. Bayle, county clerk of said county of Madison, December 21st, 1880.

JACOB WHEELER, *U. S. M.*,
By G. C. McCORD, *Deputy.*

(Indorsed:) Filed January 3, A. D. 1881. J. A. Jones, clerk.

Afterwards, to wit, on the twenty-third day of December, in the year of our Lord one thousand eight hundred and eighty, came again
7 said plaintiff by his attorneys and filed in the clerk's office of said court his declaration, copy of account sued on, and notice to defendant herein, which are in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

In circuit court, January term, A. D. 1881.

In this action, Thompson M. Warren, a citizen of the State of Wisconsin, plaintiff, by Scholes and Mather, his attorneys, complains of the County of Madison, a body corporate and politic, organized and existing under the laws of the State of Illinois, and a citizen of said southern district, in a plea of trespass on the case upon premises. For that whereas the said defendant on, to wit, the 17th day of December, in the year of our Lord one thousand eight hundred and eighty, at, to wit, said southern district, became and was indebted to the said plaintiff in the sum of six thousand dollars of lawful money of the United States of America, for divers goods, wares, and merchandises, by the said plaintiff before that time sold and delivered to the said defendant, and at the special instance and request of the said defendant; and being so indebted to the said plaintiff, the de-
8 fendant in consideration thereof afterwards, to wit, on the same day and year, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the sum of money last mentioned when the said defendant should be thereunto afterwards requested. And whereas also the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, in consideration that the said plaintiff had before that time, at the like special instance and request of the said defendant, sold and delivered to the said defendant divers other goods, wares, and merchandises of the said plaintiff, the said defendant then and there undertook and faithfully promised the said plaintiff that the said defendant would well and truly pay to the said plaintiff so much money as the aforesaid goods, wares, and merchandises, at the time of the sale and delivery thereof, were reasonably worth when the said defendant should be thereunto afterwards requested; and the said plaintiff avers that the said goods, wares, and merchandises last mentioned, at the

time of the sale and delivery thereof, were reasonably worth the sum of six thousand dollars of like lawful money as aforesaid, to wit, at the
9 place aforesaid, whereof the said defendant afterwards, to wit, on the same day and year, and at the same place aforesaid, had notice. And whereas also the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, was indebted to the said plaintiff in the further sum of six thousand dollars of like lawful money as aforesaid, for money before that time lent and advanced by the said plaintiff to the said defendant, and at the like request of the said defendant, and for other money by the said plaintiff before that time paid, laid out, and expended for the said defendant, and at the like request of the defendant, and for other money by the said defendant before that time had and received, to and for the use of the said plaintiff, and being so indebted, the said defendant in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said several sums of money in this count mentioned when the said defendant should be thereunto afterwards requested. And whereas also the defendant afterwards, to wit, on the same day and year, and at the place aforesaid, accounted together with the said plaintiff of and con-
10 cerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff, and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there was found in arrear and indebted to the said plaintiff in the further sum of six thousand dollars of like lawful money as aforesaid; and being so found in arrear and indebted to the plaintiff, the defendant in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned when the said defendant should be thereunto afterwards requested. Nevertheless, the said defendant (although often requested, &c.,) has not yet paid the said several sums of money above mentioned or any or either of them, or any part thereof, to the said plaintiff, but to pay the same, or any part thereof, to the said plaintiff, the said defendant has hitherto altogether refused and still does refuse to the damage of the said plaintiff of six thousand dollars, and therefore the said plaintiff brings suit, &c.

By SCHOLES AND MATHER,
His Att'ys.

(Indorsed:) Filed December 23, 1880. J. A. Jones, clerk.

11 *Copy of account sued on.*

Copy of account sued on.

The County of Madison to Thompson M. Warren, Dr.

For goods, wares, and merchandise	$6,000
" money lent and advanced	$6,000
" " paid, laid out, and expended	$6,000
" " had and received	$6,000
" " due on account stated	$6,000

(Endorsed:) Filed December 23, 1880. J. A. Jones, clerk.

Notice to the defendant.

Notice to the defendant.

The defendant is hereby notified that plaintiff hereby offers to surrender, and does tender, six bonds issued by said county, Nos. 178, 179, 180, & 181, for $500 each, dated the eighth day of June, 1871, and due eight years from the 10th day of June, A. D. 1871, and Nos. 171 and 173, for $1,000 each, dated the 2nd day of May, 1871, and due seven years after the 10th day of June, 1871, together with six $50 coupons belonging to said $1,000 bonds, and twenty $25 coupons belonging to said $500 bonds; and plaintiff will rely upon in evidence the receipt by said county of money which it obtained on said bonds and refuses to refund.

(Endorsed:) Filed December 23, 1880. J. A. Jones, clerk.

12 Then afterwards, to wit, on the third day of January, in the January term of said court, in the year of our Lord one thousand eight hundred and eighty-one, the following proceedings were had in said court in said cause and entered of record, to wit:

Rule to plead.

THOMPSON M. WARREN } Assumpsit.
v.
COUNTY OF MADISON.

On motion of plaintiff, by Messrs. Scholes and Mather, his attorneys, the defendant having been regularly served with process, is ruled to plead herein by Wednesday, the 5th day of January inst.

Now afterwards, to wit, on the third day of January, in the year last aforesaid, came the defendant, by J. H. Yager, esq., its attorney, and filed in the clerk's office of said court its plea herein, which said plea is in the words and figures following, to wit:

Plea.

UNITED STATES OF AMERICA:

In the circuit court for the southern district of Illinois. January term, A. D. 1881.

13 THE COUNTY OF MADISON } Assumpsit.
ats.
THOMPSON M. WARREN.

And the defendant, by J. H. Yager, State's att'y for said county, comes and defends the wrong and injury, when, etc., and says that it did not undertake and promise in manner and form as the plaintiff has in his declaration thereof complained against it, and of this it puts itself upon the country, etc. And for further plea in this behalf, the defendant says that the plaintiff ought not to have or maintain its aforesaid action thereof

against it, because it says that the several causes of action in the said counts mentioned, and each and every one of them, did not at any time within five years next before the commencement of this suit accrue to the plaintiff, and this the defendant is ready to verify; wherefore it prays judgment if the plaintiff his action aforesaid thereof against it ought to have or maintain.

J. H. YAGER,
Attorney for Def't.

(Endorsed:) Filed January 3rd, 1881. J. A. Jones, clerk.

14 Afterwards, to wit, on the twenty-first day of March, in the year of our Lord one thousand eight hundred and eighty-two, came again said plaintiff, by his attorneys, and filed in the clerk's office of said court his replication to defendant's plea herein, which said replication is in the words and figures following, to wit:

Replication to plea.

UNITED STATES OF AMERICA:

In the circuit court for the southern district of Illinois. January term, A. D. 1882.

THOMPSON M. WARREN
vs.
THE COUNTY OF MADISON. } Assumpsit.

And the said plaintiff, as to the plea of the said defendant secondly above pleaded in bar, says that he ought not to be barred of his action aforesaid, because he says that the said several causes of action in the said several counts of said declaration mentioned, and each of them, did accrue to the plaintiff within five years before the commencement of this suit in manner and form as the plaintiff hath thereof above complained against the defendant, and this he prays may be inquired of by the country.

By T. C. MATHER,
Att'y for Pl'ff.

15 And the defendant doth the like.

By J. H. YAGER, *His Att'y.*

(Indorsed:) Filed March 21, 1882. J. A. Jones, clerk.

Afterwards, to wit, on the seventeenth day of May, in the January term of said court, in the year eighteen hundred and eighty-two, the following further proceedings were had in said court in said cause and entered of record, to wit:

Judgment.

THOMPSON M. WARREN
v.
COUNTY OF MADISON. } Assumpsit.

And now this day came said cause on for hearing, the parties having stipulated to submit the same for trial by the court without the intervention of a jury; and the court having heard and read the proofs and

exhibits offered in evidence and the arguments of counsel, and being fully advised in the premises, doth order and adjudge that plaintiff have and recover of and from the defendant herein his damages, amounting
16 to the sum of five thousand three hundred and four dollars, and also the costs of this suit. And a writ of error to the Supreme Court is allowed to the defendant on its entering into bond to the plaintiff in the penalty of five hundred dollars, and conditioned as the law directs, security to be approved by the court within sixty days from this date, and leave also is given the defendant to tender a bill of exceptions within sixty days.

Afterwards, to wit, on the twenty-third day of June, in the year last aforesaid, came again said defendant, by its attorneys, and filed in the clerk's office of said court its bill of exceptions herein, which said bill of exceptions is in the words and figures following, to wit:

Bill of exceptions.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

In the circuit court of the United States for the southern district of Illinois, of the January term, A. D. 1882.

THOMPSON M. WARREN
vs.
MADISON COUNTY. } Bill of exceptions.

17 Be it remembered that on the trial of this cause at the January term, A. D. 1882, of said circuit court, said cause being tried by the court without a jury, by agreement of parties, the plaintiff tendered to the defendant and surrendered into court the following bonds and coupons, with the indorsements thereon, to wit:

No. 171.] UNITED STATES OF AMERICA, STATE OF ILLINOIS. [$1,000.

[Fifty cents (50). United States inter. revenue. 50. Entry of goods.]

The County of Madison, seven years after the 10th day of June, 1871, promises to pay C. A. Caldwell, or bearer, at the banking-house of West & Prickett, Edwardsville, Madison County, Illinois, the sum of one thousand dollars, for value received, with interest on the same from the date hereof, at the rate of ten per cent. per annum, payable on the 10th day of June and December in each year, on presentation of the proper coupon hereunto annexed.

In witness whereof, and in pursuance of said order of said court, this bond is signed by the County of Madison and countersigned by the county clerk of said county, and the seal of said court affixed at Edwardsville this 2nd day of May, eighteen hundred and seventy-one.

[L. S.] THE COUNTY OF MADISON,
By WM. T. BROWN,
County Judge.

Countersigned:
B. E. HOFFMANN, *County Clerk.*

18 Issued by the County of Madison, under an order of the county court of Madison County, State of Illinois. Dated April 21, 1871.

(Indorsed:) Pay C. A. Caldwell, esq., cashier, or order, for collection.
VIRGIL WARREN.

(Also indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

No. 173.] UNITED STATES OF AMERICA, STATE OF ILLINOIS. [$1,000.

[Fifty cents (50). United States inter. revenue. 50. Entry of goods.]

The County of Madison, seven years after the 10th day of June, 1871, promises to pay C. A. Caldwell, or bearer, at the banking-house of West & Prickett, Edwardsville, Madison County, Illinois, the sum of one thousand dollars, for value received, with interest on the same from the date hereof, at the rate of ten per cent. per annum, payable on the 10th day of June and December in each year, on presentation of the proper coupon, hereunto annexed.

In witness whereof, and in pursuance of said order of said court, this bond is signed by the County of Madison and countersigned by the
19 county clerk of said county, and the seal of said court affixed, at Edwardsville, this 2nd day of May, eighteen hundred and seventy-one.

[L. S.] THE COUNTY OF MADISON,
By WM. T. BROWN,
County Judge.

Countersigned:
B. E. HOFFMANN, *County Clerk.*

Issued by the County of Madison, under and order of the county court of Madison County, State of Illinois. Dated April 21, 1871.

(Indorsed:) Pay C. A. Caldwell, esq., cash'r, or order, for collection.
VIRGIL WARREN.

(Also indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

No. 178.] UNITED STATES OF AMERICA, STATE OF ILLINOIS. [$500.

[United States. Twenty-five cts. 25. 25. Certificate inter. revenue.]

The County of Madison, eight years after the 10th day of June, 1871, promises to pay Alton National Bank, or bearer, at the banking-house of West & Prickett, Edwardsville, Madison County, Illinois, the sum of five hundred dollars, for value received, with interest on the same from
20 the date hereof, at the rate of ten per cent. per annum, payable on the 10th day of June and December in each year, on presentation of the proper coupon, hereunto annexed.

In witness whereof, and in pursuance of said order of said court, this bond is signed by the county of Madison, and countersigned by the county

clerk of said County, and the seal of said court affixed at Edwardsville, this 8' day of June, eighteen hundred and seventy-one.

[L. S.] THE COUNTY OF MADISON,
By WM. T. BROWN,
County Judge.

Countersigned:
B. E. HOFFMANN, *County Clerk.*

Issued by the County of Madison, under an order of the county court of Madison County, State of Illinois. Dated June 8, 1871.

(Indorsed:) Pay C. A. Caldwell, esq., cash, or order, for collection.
VIRGIL WARREN.

(Also indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

No. 179.] UNITED STATES OF AMERICA, STATE OF ILLINOIS. [$500.

21 The County of Madison, eight years after the 10th day of June, 1871, promises to pay Alton National Bank, or bearer, at the banking-house of West & Prickett, Edwardsville, Madison County, Illinois, the sum of five hundred dollars, for value received, with interest on the same from the date hereof, at the rate of ten per cent. per annum, payable on the 10th day of June and December in each year, on presentation of the proper coupon hereunto annexed.

In witness whereof, and in pursuance of said order by said court, this bond is signed by the County of Madison, and countersigned by the county clerk of said county, and the seal of said court affixed at Edwardsville, this 8' day of June, eighteen hundred and seventy-one.

[L. S.] THE COUNTY OF MADISON,
By WM. T. BROWN,
County Judge.

Countersigned:
B. E. HOFFMAN, *County Clerk.*

[United States. Twenty-five cts. 25. 25. Insurance. Inter. revenue.]

Issued by the County of Madison, under an order of the county court of Madison County, State of Illinois. Dated June 8, 1871.

(Indorsed:) Pay C. A. Caldwell, esq., cashr, or order, for collection.
VIRGIL WARREN.

(Also indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

22 No. 180.] UNITED STATES OF AMERICA, STATE OF ILLINOIS. [$500.

[United States. Twenty-five cts. 25. 25. Insurance. Inter. revenue.]

The County of Madison, eight years after the 10th day of June, 1871, promises to pay Alton National Bank, or bearer, at the banking-house of

West & Prickett, Edwardsville, Madison County, Illinois, the sum of five hundred dollars, for value received, with interest on the same from the date hereof, at the rate of ten per cent. per annum, payable on the 10th day of June and December in each year, on presentation of the proper coupon, hereunto annexed.

In witness whereof, and in pursuance of said order of said court, this bond is signed by the county of Madison and countersigned by the county clerk of said County, and the seal of said court affixed, at Edwardsville, this 8' day of June, eighteen hundred and seventy-one.

[L. S.] THE COUNTY OF MADISON,
By WM. T. BROWN,
County Judge.

Countersigned:
B. E. HOFFMANN, *County Clerk.*

Issued by the County of Madison, under an order of the county court of Madison County, State of Illinois. Dated June 8, 1871.

23 (Indorsed:) Pay C. A. Caldwell, esq., cash'r, or order, for collection.
VIRGIL WARREN.

(Also indorsed:) Filed and judgment rendered May 17, 1882. J. A. Jones, clerk.

No. 181.] UNITED STATES OF AMERICA, STATE OF ILLINOIS. [$500.

[United States. Twenty-five cents. 25. Insurance. Inter. Revenue. 25.]

The County of Madison, eight years after the 10th day of June, 1871, promises to pay Alton National Bank, or bearer, at the banking house of West & Prickett, Edwardsville, Madison County, Illinois, the sum of five hundred dollars for value received, with interest on the same from the date hereof at the rate of ten per cent. per annum, payable on the 10th day of June and December in each year, on presentation of the proper coupon hereunto annexed.

In witness whereof, and in pursuance of said order of said court, this bond is signed by the county of Madison, and countersigned by the county clerk of said county, and the seal of said court affixed, at Edwardsville this 8 day of June, eighteen hundred and seventy-one.

[L. S.] THE COUNTY OF MADISON,
By WM. T. BROWN,
County Judge.

Countersigned.
B. E. HOFFMAN, *County Clerk.*

24 Issued by the county of Madison, under an order of the county court of Madison County, State of Illinois, dated June 8, 1871.

(Indorsed:) Pay C. A. Caldwell, cash'r or order, for collection.
VIRGIL WARREN.

(Also indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

$50.] EDWARDSVILLE, ILL., *May* 2, 1871.

The County of Madison, State of Illinois, will pay to the bearer, at the banking house of West & Prickett, Edwardsville, on the 10th day of June, 1877, the sum of fifty dollars, being interest to that date on bond No. 171 for $1,000. This coupon is given in pursuance of an order of the county court of said county, made April 21, A. D. 1871, with seal of court affixed.

B. E. HOFFMAN,
Clerk Madison County Court.

(Indorsed:) Pay C. A. Caldwell, cash'r, or order, for collection.

(Also indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

25 $50.] EDWARDSVILLE, ILL., *May* 9, 1871.

The County of Madison, State of Illinois, will pay to the bearer, at the banking house of West & Prickett, Edwardsville, on the 10th day of December, 1877, the sum of fifty dollars, being interest to that date on bond No. 171 for $1,000. This coupon is given in pursuance of an order of the county court of said county, made April 21, A. D. 1871, with seal of court affixed.

B. E. HOFFMANN,
Clerk Madison County Court.

(Indorsed:) Pay C. A. Caldwell, cash'r, or order, for collection.

(Also indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

$50.] EDWARDSVILLE, ILL., *May* 2, 1872.

The County of Madison, State of Illinois, will pay to the bearer, at the banking house of West & Prickett, Edwardsville, on the 10th day of June, 1878, the sum of fifty dollars, being interest to that date on bond No. 171 for $1,000. This coupon is given in pursuance of an order of the county court of said county, made April 21, A. D. 1871, with seal of court affixed.

B. E. HOFFMAN,
Clerk Madison County Court.

26 (Indorsed:) Pay C. A. Caldwell, cash'r, or order, for collection.

(Also indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

$50.] EDWARDSVILLE, ILL., *May* 2, 1871.

The County of Madison, State of Illinois, will pay to the bearer, at the banking house of West & Prickett, Edwardsville, on the 10th day of June, 1877, the sum of fifty dollars, being interest to that date on bond No. 173 for $1,000. This coupon is given in pursuance of an order of the county court of said county, made April 21, A. D. 1871, with seal of court affixed.

B. E. HOFFMANN,
Clerk Madison County Court.

(Indorsed:) Pay C. A. Caldwell, cash'r, or order, for collection.

(Also indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

$50.] EDWARDSVILLE, ILL., *May* 2, 1871.

The County of Madison, State of Illinois, will pay to the bearer, at the banking house of West & Prickett, Edwardsville, on the 10th day of December, 1877, the sum of fifty dollars, being interest to that date on
27 bond No. 173 for $1,000. This coupon is given in pursuance of an order of the county court of said county, made April 21, A. D. 1871, with seal of court affixed.

B. E. HOFFMAN,
Clerk Madison County Court.

(Indorsed:) Pay C. A. Caldwell, esq., cash'r, or order, for collection.

(Also indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

$50.] EDWARDSVILLE, ILL., *May* 2, 1871.

The County of Madison, State of Illinois, will pay to the bearer, at the banking house of West & Prickett, Edwardsville, on the 10th day of June, 1878, the sum of fifty dollars, being interest to that date on bond No. 173 for $1,000. This coupon is given in pursuance of an order of the county court of said county, made April 21, A. D. 1871, with seal of court affixed.

B. E. HOFFMAN,
Clerk Madison County Court.

(Indorsed:) Pay C. A. Caldwell, esq., cash'r, or order, for collection.

(Also indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

28 $25.] EDWARDSVILLE, ILL., *June* 8, 1871.

The County of Madison, State of Illinois, will pay to the bearer, at the banking house of West & Prickett, Edwardsville, on the 10th day of June, 1877, the sum of twenty-five dollars, being interest to that date on bond No. 178 for $500. This coupon is given in pursuance of an order of the county court of said county, made June 8, A. D. 1871, with seal of court affixed.

B. E. HOFFMAN,
Clerk Madison County Court.

(Indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

$25.] EDWARDSVILLE, ILL., *June* 8, 1871.

The County of Madison, State of Illinois, will pay to the bearer, at the banking house of West & Prickett, Edwardsville, on the 10th day of December, 1877, the sum of twenty-five dollars, being interest to that date on bond No. 178 for $500. This coupon is given in pursuance of an order

of the county court of said county, made June 8, A. D. 1871, with seal of court affixed.

B. E. HOFFMAN,
Clerk Madison County Court.

(Indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

29 $25.] EDWARDSVILLE, ILL., *June* 8, 1871.

The County of Madison, State of Illinois, will pay to the bearer, at the banking house of West & Prickett, Edwardsville, on the 10th day of June, 1878 the sum of twenty-five dollars, being interest to that date on bond No. 178 for $500. This coupon is given in pursuance of an order of the county court of said county, made June 8, A. D. 1871, with seal of court affixed.

B. E. HOFFMAN,
Clerk Madison County Court.

(Indorsed:) Filed and judgment rendered May 17, 1882. J. A. Jones, clerk.

$25.] EDWARDSVILLE, ILL., *June* 8, 1871.

The County of Madison, State of Illinois, will pay to the bearer, at the banking house of West & Prickett, Edwardsville, on the 10th day of December, 1878, the sum of twenty-five dollars, being interest to that date on bond No. 178, for $500. This coupon is given in pursuance of an order of the county court of said county, made June 8, A. D. 1871, with seal of court affixed.

B. E. HOFFMAN,
Clerk Madison County Court.

(Indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

30 $25.] EDWARDSVILLE, ILL., *June* 8, 1871.

The County of Madison, State of Illinois, will pay to the bearer, at the banking house of West & Prickett, Edwardsville, on the 10th day of June, 1879, the sum of twenty-five dollars, being interest to that date on bond No. 178 for $500. This coupon is given in pursuance of an order of the county court of said county, made June 8, A. D. 1871, with seal of court affixed.

B. E. HOFFMAN,
Clerk Madison County Court.

(Indorsed:) Filed and judgment rendered May 17, 1882. J. A. Jones, clerk.

$25.] EDWARDSVILLE, ILL., *June* 8, 1871.

The County of Madison, State of Illinois, will pay to the bearer, at the banking house of West & Prickett, Edwardsville, on the 10th day of June, 1877, the sum of twenty-five dollars, being interest to that date on bond No. 179 for $500. This coupon is given in pursuance of an order of the

county court of said county, made June 8, A. D. 1871, with seal of court affixed.

B. E. HOFFMAN,
Clerk Madison County Court.

(Indorsed:) Pay C. A. Caldwell, esq., cash'r, or order, for collection.

(Also indorsed:) Filed and judgment rendered May 17, 1882. J. A. Jones, clerk.

31 $25.] EDWARDSVILLE, ILL., *June* 8, 1871.

The County of Madison, State of Illinois, will pay to the bearer, at the banking house of West & Prickett, Edwardsville, on the 10th day of December, 1877, the sum of twenty-five dollars, being interest to that date on bond No. 179 for $500. This coupon is given in pursuance of an order of the county court of said county, made June 8, A. D. 1871, with seal of said court affixed.

B. E. HOFFMAN,
Clerk Madison County Court.

(Indorsed:) Pay C. A. Caldwell, esq., cash'r, or order, for collection.

(Also indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

$25.] EDWARDSVILLE, ILL., *June* 8, 1871.

The County of Madison, State of Illinois, will pay to the bearer, at the banking house of West & Prickett, Edwardsville, on the 10th day of June, 1878, the sum of twenty-five dollars, being interest to that date on bond No. 179 for $500. This coupon is given in pursuance of an order of the county court of said county, made June 8, A. D. 1871, with seal of said court affixed.

B. E. HOFFMAN,
Clerk Madison County Court.

(Indorsed:) Pay C. A. Caldwell, esq., cash'r, or order, for collection.

32 (Also indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

$25.] EDWARDSVILLE, ILL., *June* 8, 1871.

The County of Madison, State of Illinois, will pay to the bearer at the banking house of West & Prickett, Edwardsville, on the 10th day of December, 1878, the sum of twenty-five dollars, being interest to that date on bond No. 179 for $500. This coupon is given in pursuance of an order of the county court of said county, made June 8, A. D. 1871, with seal of court affixed.

B. E. HOFFMAN,
Clerk Madison County Court.

(Indorsed:) Pay C. A. Caldwell, esq., cash'r, or order, for collection.

(Also indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

$25.] EDWARDSVILLE, ILL., *June* 8, 1871.

The County of Madison, State of Illinois, will pay to the bearer at the banking house of West & Prickett, Edwardsville, on the 10th day of June, 1879, the sum of twenty-five dollars, being interest to that date on bond No. 179 for $500. This coupon is given in pursuance of an order
33 of the county court of said county, made June 8, A. D. 1871, with seal of court affixed.

B. E. HOFFMANN,
Clerk Madison County Court.

(Indorsed:) Pay C. A. Caldwell, esq., cash'r, or order, for collection.

(Also indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

$25.] EDWARDSVILLE, ILL., *June* 8, 1871.

The County of Madison, State of Illinois, will pay to the bearer at the banking house of West & Prickett, Edwardsville, on the 10th day of June, 1877, the sum of twenty-five dollars, being interest to that date on bond No. 180 for $500. This coupon is given in pursuance of an order of the county court of said county, made June 8, A. D. 1871, with seal of court affixed.

B. E. HOFFMAN,
Clerk Madison County Court.

(Indorsed:) Pay C. A. Caldwell, esq., cash'r, or order, for collection.

(Also indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

34 $25.] EDWARDSVILLE, ILL., *June* 8, 1871.

The County of Madison, State of Illinois, will pay to the bearer at the banking house of West & Prickett, Edwardsville, on the 10th day of December, 1877, the sum of twenty-five dollars, being interest to that date on bond No. 180 for $500. This coupon is given in pursuance of an order of the county court of said county, made June 8, 1871, with seal of court affixed.

B. E. HOFFMANN,
Clerk Madison County Court.

(Indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

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The County of Madison, State of Illinois, will pay to the bearer at the banking house of West & Prickett, Edwardsville, on the 10th day of June, 1878, the sum of twenty-five dollars, being interest to that date on bond No. 180 for $500. This coupon is given in pursuance of an order of the county court of said county, made June 8, A. D. 1871, with seal of court affixed.

B. E. HOFFMAN,
Clerk Madison County Court.

(Indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

35 $25.] EDWARDSVILLE, ILL., *June* 8, 1871.

The County of Madison, State of Illinois, will pay to the bearer at the banking house of West & Prickett, Edwardsville, on the 10th day of December, 1878, the sum of twenty-five dollars, being interest to that date on bond No. 180 for $500. This coupon is given in pursuance of an order of the county court of said county, made June 8, A. D. 1871, with seal of court affixed.

B. E. HOFFMANN,
Clerk Madison County Court.

(Indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

$25.] EDWARDSVILLE, ILL., *June* 8, 1871.

The County of Madison, State of Illinois, will pay to the bearer at the banking house of West & Prickett, Edwardsville, on the 10th day of June, 1879, the sum of twenty-five dollars, being interest to that date on bond No. 180 for $500. This coupon is given in pursuance of an order of the county court of said county, made June 8, A. D. 1871, with seal of court affixed.

B. E. HOFFMANN,
Clerk Madison County Court.

(Indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

36 $25.] EDWARDSVILLE, ILL., *June* 8, 1871.

The County of Madison, State of Illinois, will pay to the bearer at the banking house of West & Prickett, Edwardsville, on the 10th day of June, 1877, the sum of twenty-five dollars, being interest to that date on bond No. 181 for $500. This coupon is given in pursuance of an order of the county court of said county, made June 8, A. D. 1871, with seal of court affixed.

B. E. HOFFMANN,
Clerk Madison County Court.

(Indorsed:) Pay C. A. Caldwell, esq., cash'r, or order, for collection.

(Also indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

$25.] EDWARDSVILLE, ILL., *June* 8, 1871.

The County of Madison, State of Illinois, will pay to the bearer at the banking house of West & Prickett, Edwardsville, on the 10th day of December, 1877, the sum of twenty-five dollars, being interest to that date on bond No. 181 for $500. This coupon is given in pursuance of an order of the county court of said county, made June 8, A. D. 1871, with seal of court affixed.

B. E. HOFFMANN,
Clerk Madison County Court.

37 (Indorsed:) Pay C. A. Caldwell, esq., cash'r, or order, for collection.

(Also indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

$25.] EDWARDSVILE, ILL., *June* 8, 1871.

The county of Madison, State of Illinois, will pay to the bearer at the banking house of West & Prickett, Edwardsville, on the 10th day of June, 1878, the sum of twenty-five dollars, being interest to that date on bond No. 181 for $500. This coupon is given in pursuance of an order of the county court of said county, made June 8, A. D. 1871, with seal of court affixed.

B. E. HOFFMANN,
Clerk Madison County Court.

(Indorsed:) Pay C. A. Caldwell, esq., cash'r or order, for collection.

(Also indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

$25.] EDWARDSVILLE, ILL., *June* 8, 1871.

The county of Madison, State of Illinois, will pay to the bearer at
38 the banking house of West & Prickett, Edwardsville, on the 10th day of December, 1878, the sum of twenty-five dollars, being interest to that date on bond No. 181 for $500. This coupon is given in pursuance of an order of the county court of said county, made June 8, A. D. 1871, with seal of court affixed.

B. E. HOFFMAN,
Clerk Madison County Court.

(Indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

$25.] EDWARDSVILLE, ILL., *June* 8, 1871.

The county of Madison, State of Illinois, will pay to the bearer at the banking house of West & Prickett, Edwardsville, on the 10th day of June, 1879, the sum of twenty-five dollars, being interest to that date on bond No. 181 for $500. This coupon is given in pursuance of an order of the county court of said county, made June 8, A. D. 1871, with seal of court affixed.

B. E. HOFFMANN,
Clerk Madison County Court.

(Indorsed:) Filed & judgment rendered May 17, 1882. J. A. Jones, clerk.

And plaintiff admitted said bonds and coupons were not legal
39 and valid obligations of the defendant, and to maintain the issues on his part the plaintiff gave in evidence the said bonds, coupons, and indorsements thereon, and the following orders of the county court of Madison County, to wit:

Order of Madison County court.

April special term, 1871.

STATE OF ILLINOIS,
Madison County, ss:

At a special term of the county court of said county, called by the county

judge, and begun and held on Thursday, the 20th day of April, 1871, there were present, Hon. Wm. T. Brown; Judge George R. Stocker, and Henry C. Gerke, associates justices; Robert W. Crawford, sheriff, and P. E. Hoffmann, clerk. The following proceedings were had:

APRIL 21ST, 1871.

County indebtedness.

The County of Madison having orders outstanding, numbered 17, 18, 19, 20, and 73, payable to the order of F. Ryhiner & Co., the first four each for $500.00, and the last for $250.00, also order numbered 35 for $500.00, payable to Thomas Judy, guardian, also a note to Sweetzer & Priest for $1,004.59, also a note in favor of A. J. Poag for $300.00,
40 also an order in favor of George Barnsback for $500.00, and a note in favor of Thomas Judy, guardian, for $2,000.00, all of which indebtedness is now due and bearing 10 per cent. interest per annum, and some of the parties who hold said indebtedness being willing to extend the time for the payment of the money now due them, and the court being desirous of having further time in which to pay said indebtedness, it is ordered by the court that Wm. T. Brown, county judge, be authorized to issue bonds of Madison County to the amount of fifteen thousand dollars, to take up said orders and notes, and for other purposes, said bonds payable not to exceed ten years from date, and that he attach coupons thereto for the interest at ten per cent., payable semi-annually, and that said bonds be countersigned by the county clerk and seal and the seal of court affixed.

STATE OF ILLINOIS,
Madison County, ss:

I, Hugh E. Bayle, clerk of the county court of Madison County, Illinois, and the custodian of the records of the county court of said county, do certify that the foregoing is a correct copy of an order of said court,
made April 21st, 1871, as the same appears now of record in
41 my office, and that bonds numbered 171, 172, 173, 174, and 175, of date May 2d, 1871, were issued in pursuance of and by virtue of said order.

In testimony whereof I have hereunto set my hand and the seal of said court at Edwardsville, in said county, January 17, 1880.

[L. S.] HUGH E. BAYLE,
Clerk County Court.

(Indorsed:) Filed May 17, 1882. J. A. Jones, clerk.

June term, A. D. 1871.

STATE OF ILLINOIS,
Madison County, ss:

At a regular term of the county court of Madison County, Illinois, begun and held at the court-house, in the town of Edwardsville, on Monday, the 5th day of June, A. D. 1871, there were present Hon. Wm. T. Brown, county judge; George R. Stocker and Henry C. Gerke, associate justices; Robert W. Crawford, sheriff; and B. E. Hoffman, clerk. The following proceedings were had:

Order of Madison County court.

JUNE 8TH, 1871.

County improvements.

Whereas the county of Madison has in course of construction two
42 large bridges with stone abutments across Silver Creek, on the road from Troy to St. Jacobs, also various bridges over different creeks in the eastern part of the county, and are also about to build a bridge with stone abutments across Piasa Creek, on the road from Alton to Newbern, and the public necessity requires the opening of new roads in different parts of the county, whereby large sums of money are required to pay damages assessed for right of way and to improve said new roads; and the public road from the town of Emerald to the city limits of Alton, known as the Milton road, requiring a large outlay of money to put the same in a good condition for the use of the public, all of which improvements necessitate an appropriation of money beyond the revenue of the county for the year 1870 that can be applied to road purposes, wherefore it is necessary to effect a loan of money to supply said deficiency; it is therefore ordered that Wm. T. Brown, county judge of said county of Madison, be authorized to borrow forty thousand dollars, and that bonds be issued therefor, to bear ten per cent. interest, payable semi-annually, and to run not exceeding ten years from date of issue.

43 STATE OF ILLINOIS,
Madison County, ss:

I, Hugh E. Bayle, clerk of the county court of Madison County, Illinois, and the custodian of the records of the county court of said county, do certify that the foregoing is a correct copy of an order of said court made June 8th, 1871, as the same appears of record in my office, and that bonds of said county, numbered 178, 179, 180, and 181, of date June 8, 1871, were issued in pursuance of and by virtue of said order.

In testimony whereof I have hereunto set my hand and the seal of said court at Edwardsville, in said county, January 17, 1880.

[L. S.] HUGH E. BAYLE,
Clerk County Court.

(Indorsed:) Filed May 17, 1882. J. A. Jones, clerk.

To the introduction of which bonds, coupons, indorsements, and orders the defendant at the time objected, but the court overruled said objections and the defendant then and there excepted to said ruling of the court; and the plaintiff proved and the defendant admitted that it, the defendant, had paid all of the interest coupons on said five-hundred-dollar bonds up
44 to and including the coupons payable the tenth day of December, A. D. 1876, and all of the interest coupons on said one-thousand-dollar bonds up to and including the coupons due the tenth day of December, A. D. 1876; which was all the evidence offered by either of said parties. Whereupon the court gave judgment upon said evidence against the defendant, to which the defendant then and there excepted; and inasmuch as the matters aforesaid do not appear of record, the counsel for the de-

fendant present this bill of exceptions, and pray that the same may be signed and sealed by the court and made part of the record in said cause, and it is done accordingly.

S. H. TREAT.

(Indorsed:) Filed June 23, 1882. J. A. Jones, clerk.

And afterwards, to wit, on said twenty-third day of June, of the year last aforesaid, came again said defendant, by its attorneys, and filed in the clerk's office of said court its bond on error herein; which said bond is in the words and figures following, to wit:

45 *Bond.*

Supreme Court of the United States.

IN RE THOMPSON M. WARREN
vs.
MADISON COUNTY, IN THE STATE OF ILLINOIS. } In error.

Know all men by these presents that we, Madison County, in the State of Illinois, and John A. Prickett, of said county and State, are held and firmly bound unto the above-named Thompson M. Warren in the sum of five hundred dollars, to be paid to the said Thompson M. Warren, his executors or administrators, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our successors, heirs, executors, and administrators, firmly by these presents; sealed with our seals and dated this 13th day of June, 1882.

Whereas the above-named Madison County hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the United States circuit court in and for the southern district of Illinois, at the January term, 1882, thereof:

46 Now, therefore, the condition of this obligation is such that if the above-named Madison County shall prosecute its said writ of error to effect, and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

MADISON COUNTY, [SEAL.]
By JOHN WEAVER,
Chairman of the Judiciary Committee of the Board of Supervisors of said County, hereto duly authorized by resolution of said board.
JNO. A. PRICKETT. [SEAL.]

Witness:
LEVI DAVIS, JR.

(Indorsed:) Approved—

S. H. TREAT,
District Judge.

(Also indorsed:) Filed June 23rd, 1882. J. A. Jones, clerk.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

I, J. A. Jones, clerk of the circuit court of the United States
47 in and for the southern district of Illinois, do hereby certify the foregoing is a true and correct copy of all the papers filed and proceedings thereon had in a certain cause wherein Thompson M. Warren is plaintiff and County of Madison is defendant, as fully and completely as the same appear of file and record in my said office.

In witness whereof I have hereunto set my hand and seal of said court at Springfield, in said district, this third day of October, in the year of our Lord one thousand eight hundred and eighty-two, and of our Independence the one hundred and seventh year.

[SEAL.] J. A. JONES, *Clerk.*

48 Supreme Court of United States.

THE UNITED STATES OF AMERICA, *ss:*

To Thompson M. Warren, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Illinois, wherein the County of Madison (in the State of Illinois) is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties aforesaid in that behalf.

Witness the Hon. S. H. Treat, district judge of the United States for the southern district of Illinois, at Springfield, in said district, this 23d day of June, in the year of our Lord, 1882, and of our Independence the 106th year.

S. H. TREAT,
Dist. Judge U. S., Southern Dist. of Illinois.

(Indorsed:) Supreme Court of United States. County of Madison, plaintiff in error, vs. Thompson M. Warren. Citation.

49 Supreme Court of the United States of the October term, A. D. 1882.

THOMPSON M. WARREN, DEFENDANT IN ERROR,
a'ts } Assumpsit.
MADISON COUNTY, PLAINTIFF IN ERROR.

And now the said Madison County, plaintiff in error, by Charles P. Wise, its attorney, comes and says that in the record and proceedings aforesaid there is manifest error in this, to wit, that—

1st. The court erred in receiving in evidence bond No. 171 for $1,000, as set forth on page 17 of this record, and also the coupons belonging to said bond, as set forth on pages 24 & 25 of this record.

2nd. The court erred in receiving in evidence bond No. 173 for $1,000,

as set forth on page 18 of this record, and the coupon belonging to said bond, as set forth on pages 26 & 27 of this record.

3d. The court erred in receiving in evidence bond No. 178 for $500 on page 19 of this record, and the coupons belonging to said bond on pages 28, 29, & 30 of this record.

4th. The court erred in receiving in evidence bond No. 179 for $500 on page 20 of this record, and the coupons belonging to said bond, as set forth on pages 30, 31, and 32 of this record.

50 5. The court erred in receiving in evidence bond No. 180 for $500, on page 22 of this record, and the coupons belonging to said bond, as set forth on pages 33, 34, & 35 of this record.

6. The court erred in receiving in evidence bond No. 181 for $500, on page 23 of this record, and the coupons belonging to said bond, as set forth on pages 36, 37, & 38 of this record.

7. The court erred in receiving into evidence the copy of the order of the county court of Madison County, State of Illinois, made on April 21st, 1871, as set forth on pages 39 & 40 of this record.

8. The court erred in receiving in evidence the copy of the order of the county court of Madison County, State of Illinois, made on June 8th, 1871, on pages 41 & 42 of this record.

9. The court erred in receiving into evidence the indorsements on each and every of said bonds and coupons, as set forth on pages 18, 19, 20, 21, 23, 24, 25, 26, 27, 30, 31, 32, 33, 34, 37 of this record.

10. The court erred in rendering judgment for plaintiff.

11. The judgment of the court was contrary to the law.

12. The judgment of the court was contrary to the evidence.

13. The judgment of court should have been under the law & the evidence for the defendant, Madison County, and against the plaintiff, Thompson M. Warren, and the said Madison County prays the judgment

51 aforesaid may be reversed, annul'ed, and held as naught, & that it may be restored to all things of which it may have been deprived by reason of said judgment.

CHAS. P. WISE,
Att'y for Madison County, Plaintiff in Error.

(Indorsement on cover:) No. 1042. The County of Madison, plaintiff in error, vs. Thompson M. Warren. S. Illinois C. C., U. S. Filed 11th October, 1882.

16-662

OFFICE SUPREME COURT U.S.
FILED
DEC 6 1882
JAMES H. McKENNEY, CLERK

SUPREME COURT OF THE UNITED STATES,

NO. 1042.

COUNTY OF MADISON, Plaintiff in Error,

vs.

THOMPSON M. WARREN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF ILLINOIS.

STATEMENT OF THE CASE.

BRIEF AND ARGUMENT OF CHAS. P. WISE FOR PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES,

NO. 1042.

COUNTY OF MADISON, Plaintiff in Error,

vs.

THOMPSON M. WARREN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF ILLINOIS.

STATEMENT OF THE CASE.

This was an action in assumpsit brought by Thompson M. Warren, defendant in error, against the County of Madison, plaintiff in error, in said Circuit Court. The declaration contained the usual common counts for goods, wares and merchandise sold and delivered, and the money counts.

Attached to the declaration was the following notice:

"The defendant is hereby notified that plaintiff hereby offers to surrender, and does tender, six bonds issued by said county, Nos. 178, 179, 180 and 181, for $500 each, dated the 8th day of June, 1871, and due eight years from the tenth day of June, A. D. 1871; and Nos. 171 and 173 for $1,000 each, dated the 2d day of May, A. D. 1871, and due seven years after the tenth day of June, 1871, together with six $50 coupons belonging to said $1,000 bonds, and twenty $25 coupons belonging to said $500 bonds; and plaintiff will rely upon in evidence the receipt by said county of money which it obtained on said bonds and refuses to refund."

The pleas were the general issue and the statute of limitation, that the causes of action did not accrue in five years.

Judgment was rendered at the January term, A. D. 1882, in favor of plaintiff for $5,304, and costs of suit.

On trial the proof presented by plaintiff was as follows, viz.:

1st. Two bonds of Madison county for $1,000 each, dated May 2d, 1871, to each of which were attached three coupons payable semi-

annually, for $50, which coupons recited that they were issued in pursuance of an order of the County Court of said County, made April 21, A. D. 1871.

2d. The following order of the County Court of Madison County, Illinois:

"April 21st, 1871. The County of Madison, having orders outstanding numbered 17, 18, 19, 20 and 73, payable to the order of F. Ryhiner & Co., the first four each for $500, the last for $250; also order number 35 for $500.00, payable to Thomas Judy, guardian; also a note to Sweetser & Priest for $1,004.59; also a note in favor of A. J. Poag for $300.00; also an order in favor of George Barnsback for $500.00, and a note in favor of Thomas Judy, guardian, for $2,000.00, all of which indebtedness is now due and bearing ten per cent. interest per annum, and some of the parties who hold said indebtedness being willing to extend the time for the payment of the money now due them, and the Court being desirous of having further time in which to pay said indebtedness, it is ordered by the Court that William T. Brown, County Judge, be authorized to issue bonds of Madison County to the amount of fifteen thousand dollars, to take up said orders and notes, and for other purposes, said bonds payable not to exceed ten years from date, and that he attach coupons thereto for the interest at ten per cent., payable semi-annually, and that said bonds be countersigned by the County Clerk, and the seal of Court affixed."

3d. Four bonds of Madison County, for $500.00 each, dated June 8th, 1871, to each of which were attached four coupons of $25 each, which coupons recited that they were issued in pursuance of an order of the County Court of said county, made June 8th, 1871.

4th. The following order of the County Court of Madison County, Illinois:

"Whereas, the county of Madison has in course of construction two large bridges with stone abutments across Silver Creek, on the road from Troy to St. Jacobs; also various bridges over different creeks in the eastern part of the county, and are also about to build a bridge with stone abutments across Piasa Creek, on the road from Alton to Newbern, and the public necessity requires the opening of new roads in different parts of the county, whereby large sums of money are required to pay damages assessed for right of way, and to improve said new roads; and the public road from the town of Emerald to the limits of the city of Alton, known as the Milton road, requiring a large outlay of money to put the same in good condition for the use of the public, all of which improvements necessitate an appropriation of money beyond the revenue of the county for the year 1870 that can be applied to road purposes, wherefore it is necessary to effect a loan of money to supply said deficiency; it is therefore ordered that William T. Brown, County Judge of said county of Madison, be authorized to borrow forty thousand dollars, and that bonds be issued therefor, to bear ten per cent. interest, payable semi-annually, and to run not exceeding ten years from date of issue."

5th. The admission of defendant that it had paid coupons attached to all the bonds to and including the coupons payable December 10, 1876.

On each of the bonds and most of the coupons was the following indorsement:

"Pay C. A. Caldwell, Esq., cashier, or order, for collection.
"VIRGIL WARREN."

The defendant, at the time each of the bonds, coupons, indorsements and orders were offered in evidence, objected to the same, but the Court overruled said objections, and permitted the same to go in evidence, to which ruling of the Court at each time the defendant then and there excepted.

The defendant did not introduce any evidence, and the foregoing was all the evidence introduced in the case, and upon which evidence the Court found in favor of plaintiff, to which defendant then and there excepted, and upon which finding the Court rendered judgment, to which ruling of the Court the plaintiff then and there excepted.

The bill of exceptions was then signed and sealed by the Judge.

ERRORS ASSIGNED.

The County of Madison, plaintiff in error, by its attorney and counsel, now assigns the following separate and specific errors which appear in the foregoing proceedings and rulings of the Circuit Court:

1. The Court erred in receiving in evidence each of the said bonds and coupons, because the said bonds and coupons were issued without authority of law, were void, and not binding on said county for any purpose; they were irrelevant to the issue, and did not show or tend to show that the county ever received any money for the same.

2. The Court erred in receiving in evidence each of the said bonds and coupons, because the plaintiff did not even show that the bonds belonged to him. They were made payable to the Alton National Bank, which never endorsed the same, and the endorsement on the bonds showed they belonged to Virgil Warren, not plaintiff Thompson M. Warren. They did not show any right or title or ownership in plaintiff, and were irrelevant to the issue.

3. The Court erred in admitting each of the orders of the Madison County Court in evidence, because the said orders were void; the Court had no power to make or enforce them; it had no power to borrow money; no power to issue interest bearing bonds or orders; no power to pay illegal interest-bearing orders; no power to borrow money to build bridges or make roads, consequently they were irrelevant to the issue.

4. The Court erred in rendering judgment for plaintiff, because, *first*, the bonds, being illegal and void, plaintiff could acquire no rights by them; *second*, there was no evidence showing either that plaintiff was a bona fide holder for value, that the county ever received any money or value from the sale or disposition of the bonds; *third*, in any event the judgment is excessive, and if plaintiff is entitled to a judgment, it would only be the amount of principal after deducting the payments made by the county. In this suit, if plaintiff can recover, he recovers not by virtue of any express contract, consequently his claim would bear no interest, and the payments made would have to be deducted; and because of admitting the evidence of the plaintiff, herein before specifically objected to, and for other reasons apparent on the record.

CHAS. P. WISE, Counsel for Plaintiff in Error.

POINTS AND AUTHORITIES SUBMITTED ON BEHALF OF PLAINTIFF IN ERROR.

I.

Corporations have only such powers as are expressly delegated to them. No authorities are required to sustain this proposition.

II.

The bonds and coupons are void; the county had no power to issue them:

County of Hardin vs. McFarlan, 82 Ill., p. 138.
Gaddis vs. Richland Co., 92 Ill., 125.
Lippincott et al. vs. Town of Pana et al., 92 Ill., 124.
Marsh vs. Fulton Co., 77 U. S. Rep. (10 Wall) 676.
Sess. Laws, 1863, p. 41. R. S. 1874, p. 796, § 27.

III.

The bonds being void, no action can be maintained against the county by the holder for the money he paid for them.

Agawam National Bank vs. South Hadley, 128 Mass., 503.
Kelley vs. Lindsey, 7 Gray, 287.
Railroad National Bank vs. Lowell, 109 Mass., 214.
Thomas vs. City of Richmond, 79 U. S., R. 349.
Clark vs. City of DesMoines, 19 Iowa, 199.
Hodges vs. Buffalo, 2 Denio, 110.
Halstead vs. Mayor of New York, 3 N. Y., 430.
Swift vs. Williamsburg, 24 Barb., 427.
Brady vs. Mayor of N. Y., 20 N. Y., 312.
Chaney vs. Brookfield, 60 Mo., 53.

IV.

If a recovery can be had, it can only be after plaintiff has proved, *first*, that he is the owner of the bonds; *second*, that he paid a valuable consideration for the bonds; *third*, that the consideration so paid went into the county treasury, was accepted by the county, and was expended for some legitimate purpose authorized by law:

Woods vs. City of Louisiana, 12 Otto., 294.

Gause vs. City of Clarksville, 19 Albany Law Journal, p. 253.

Parsons vs Monmouth, 70 Mo., 262.

V.

Interest cannot be recovered against a county in the State of Illinois upon any indebtedness due by the county:

Madison County vs. Bartlett, 1 Scam., 67.

Pike County vs. Hosford, 11 Ill., 170.

County of Hardin vs. McFadden, 82 Ill., 138.

Nor from a municipal corporation, except on an express agreement to pay interest:

City of Pekin vs. Reynolds, 31 Ill., 530.

Chicago vs. People ex. rel., 56 Ill., 334.

This being the construction given the statute by the State Courts, it will be adhered to as correct by the Federal Courts.

VI.

If a recovery can be had, it must be for what remained unpaid of the original consideration. It was $4,000. Credit must be given for every cent paid the bondholder; it was not interest paid him, but principal. If the plaintiff be entitled to recover the money claimed to have been paid under both orders of the County Court, then, as $2,150 has been paid, the balance due would be $1,850.

If entitled to recover under only one order, then nothing remains to be paid:

Hall vs. Jackson County, 5 Brad., 609.

Hall vs. Jackson County, 95 Ill., 352.

ARGUMENT.

The County Court of Madison County, Illinois, illegally issued certain bonds, of which the plaintiff is in possession of four of the denomination of $500 each, and two of the denomination of $1,000 each. The former are dated June 10, 1871, and mature in 8 years, and the latter are dated May, 1871, being due 7 years from date. All of said bonds having attached to them semi-annual interest coupons.

The plaintiff, at a previous term of the Circuit Court for the

Southern District of the State of Illinois, brought suit upon certain of the coupons attached to the bonds; the defendant then contended the bonds, and consequently the coupons were void, being issued by the County Court without having any power to do so, relying upon the statute and the decisions of the Supreme Court of Illinois, mentioned in our brief on this point, and the uniform decisions of the Supreme Court of the United States to the effect, *first*, when the corporation had not the power to issue the bonds they were void, and, *second*, when the statute of a State has been construed by the Supreme Court of that State, the Federal Courts will adopt the same construction. The court decided in favor of the defendant, and the plaintiff took a non-suit, and now brings this suit against defendant for money had and received, and admits in the bill of exceptions that the bonds are void—page 17 of the printed transcript of this record—and tenders the bonds and surrenders the same into Court.

The Circuit Court rendered judgment in favor of plaintiff for the amount of the bonds and coupons and interest on the same.

On trial the proof presented by the plaintiff was:

1st. The bonds and coupons, and endorsements on the same.

2d. The orders of the County Court dated respectively April 21, 1871, and June 8, 1871.

3d. The admission of defendant that it had paid coupons attached to the bonds to and including those of December 10, 1876.

The Court will perceive from the above orders that Madison County was not then under township organization, but its financial affairs were managed by the County Judge and two associate justices, who formed the County Court for county business. At that time their powers were as follows:

Gross. Stat. of Ill., 1869, p. 148, § 14: "The said Courts shall have jurisdiction throughout their respective counties in all matters and things concerning the county revenue, and regulating and imposing the county tax, and shall have power to grant licenses for ferries and for taverns, and all other licenses and things that may bring in a county revenue; and shall have jurisdiction in all cases of public roads, canals, turnpike roads and toll bridges, where the law does not prohibit the said jurisdiction of said courts; and shall have power and jurisdiction to issue all kinds of writs, warrants, process and proceedings by the clerk, throughout the State, which are necessary to the execution of the power and jurisdiction with which such courts are or may be vested by law."

§ 18. "There shall be nothing contained or construed in this chapter to give said court any original or appellate jurisdiction in civil or criminal suits or actions, wherein the State is a party, or any individual or individuals, bodies politic or corporate, are parties; but said court shall have jurisdiction in all cases when the matter or thing brought before said Court relates to the public concerns of the county collectively, and all county business; and the said Court shall have power to punish for contempt, as other courts may do, and have all the power necessary to the right exercise of

the jurisdiction with which said Court is or may be vested according to law; and the clerks of said Courts, respectively, shall have the same fees, emoluments and perquisites of office as are given to the clerks of other Courts of this State by law, for like services as may be given them by law."

Page 673, § 59. "Whenever a new road shall be located, the County Commissioners shall immediately cause the supervisors of each district through which said road shall pass, to be notified of such location; and it shall be the duty of the said supervisors to make such road within their respective districts, and keep the same in repair, so far as the labor of the persons bound to work on said road shall enable him; and if such labor be insufficient, the County Commissioners shall cause the same to be cut out and opened at the expense of the county, whenever, in their opinion, the funds of the county will justify such expense; and after being so opened, the same shall be kept in repair by the supervisor, as in other cases."

Page 668, § 21. "The County Commissioners' Courts of the several counties in this State, at the March Term, annually shall fix and cause to be entered upon the records of their Courts, a certain number of days not exceeding five nor less than two, that each and every able-bodied man between the ages of 21 and 50 years shall labor on some public road within the county during the year, and it shall be the duty of the clerk of said Court to certify the number of days fixed as aforesaid in the notice to each supervisor appointed in said county."

§ 22. "The County Courts of the several counties in this State not having township organization, may, at any regular term of said Court, fix, and cause to be entered on record, the number of days now required by law, that persons shall labor upon public roads in such counties."

§ 23. "The County Commissioners' Courts of the several counties in this State, in levying a tax, not exceeding 50 cents on every $100 worth of taxable property in their counties respectively, for county purposes, which they are authorized by law to levy, may, at the time of fixing upon the amount of tax to be assessed and collected for county purposes, in their discretion, set apart any amount of the tax so levied for county purposes, not exceeding one-half of said levy, for road purposes; and a column in the tax book shall designate the amount of road tax due from each person to be collected."

§ 24. "The County Commissioners' Court of each and every county, in addition to the work required (in the foregoing section 21), may at the March term, annually, assess a road tax of not more than 20 cents on each $100 worth of taxable property, real and personal, or either, in their counties; and a column in the tax-book shall designate the amount of such road-tax due from each person, from whom the same is to be collected."

The name, County Commissioners' Court, was afterwards changed by statute to that of County Court, and all the powers of the former vested in the latter.

The law in force when these bonds were issued, which empowered the County Court to levy an additional tax to pay county indebtedness, bears this title: "An act to enable counties owing debts to liquidate the same," and it provides that County Courts, for county business, in counties without township organization, and the board of supervisors of counties under township organization, in such counties as may be owing debts which their current revenue, under existing laws, is not sufficient to pay, may, if deemed advisable, levy a special tax, not to exceed, in any one year, one per cent. on the taxable property of any such county, to be assessed and collected in the same manner and at the same time and rate of compensation as other county taxes, and, when collected, to be kept as a separate fund in the county treasury, and to be expended under the direction of the said County Court, or board of supervisors, as the case may be, in liquidation of such indebtedness."—Session Laws 1863, p. 41.

The County Court would pass upon and audit a claim, the clerk would draw the order or warrant on the treasurer for the amount allowed, and the treasurer would pay the same. At the time the County Court passed the above orders, there was then no law enabling the county to give an interest-bearing order, or a note or bond bearing interest, nor had there ever been any such law, and there is none now until, by a vote of the people, the same is authorized to be done.

The order of the County Court, passed on April 21st, 1871, expressly sets forth the orders and notes mentioned in the same bore ten per cent. interest. The County Court not having the power to issue the same, they were void; and to pay these void orders and notes, the County Court issued void bonds. If the notes and orders had been sued on no recovery could be had on them, because the county had no power to issue them. Will these illegal void orders and notes be a sufficient foundation, a sufficient consideration, upon which to base plaintiff's claim? He does not go back of the orders and notes to show that the county ever received any valid consideration for the same, but rests on the order of court issuing the bonds, which is illegal, and shows the money, if any ever was received from the bonds, was to be used to pay illegal orders.

The Court will perceive that under the law then in force the county was armed with full power to collect ample revenue for the purposes of roads and bridges.

The order of June 8th, 1871, is worthy of examination in connection with the several provisions of the statute in relation to Roads and Bridges in force when it was made by the Court.

It will be seen the order recites three purposes for which it was considered necessary to raise the amount of money therein specified, namely, 1st, to build bridges; 2d, to pay the damages assessed for new roads to be opened, and to improve the same; and, 3d, to repair or improve the public road known as the Milton Road, and the order expressly shows why it was necessary to raise this money for these purposes, namely, because these "improvements

necessitate an appropriation of money beyond the revenue of the county for the year 1870 *that can be applied to road purposes.*"

The following provisions of the various acts in relation to Roads and Bridges were the only ones empowering the Court to raise funds for any of these purposes, and unless these provisions, or some of them, can be held to authorize the Court to borrow this money, it possessed no such power.

1st. Section 21, chap. 93, Gross' Statutes of Illinois (1869), which is set out in full on page 7 of this brief, provides for fixing a certain number of days for road labor.

2d. Section 23, same chapter, which appears in full on page 7 *ante*, provides that the Court in levying a tax, not exceeding 50 cents on every $100, etc., for county purposes, may set apart any amount thereof, "*not exceeding one half of said levy for road purposes.*"

3d. Section 24, also set out in full on page 7 *ante*, authorizes the Court, in addition to the foregoing, to annually "assess a road tax of *not more* than 20 cents on each $100," etc.

4th. Section 39, same chapter, provides that every supervisor shall endeavor to collect all road and labor tax, and close the work by the 25th of December, annually, and that all moneys so collected, after deducting the per cent. for collecting and costs paid out, to be allowed by the Court, "shall be set apart in the treasury of the county as a road fund, to be disbursed by order of the Commissioners' Court, in the erection of bridges and improvement of such public roads in the county as they may deem most advantageous to the public; and in no case shall the Court appropriate or divert any portion of said road fund to any other purpose than the construction of roads and road purposes."

Section 43 is as follows: "Supervisors are hereby authorized to hire teams to do the necessary hauling, plowing and scraping, to contract for materials for building bridges, causeways, erecting guide-boards, for making and furnishing road scrapers, and repairing roads, *in discharge of labor and road tax due,* and, *so far as funds shall come into possession,* procuring said teams, materials, implements and work on the best possible terms."

Section 59 provides that whenever a new road shall be located, the county commissioners shall cause the supervisors of each district through which such road shall pass to be notified of such location; and it shall be the duty of said supervisors to make such road within their respective districts, and keep the same in repair *so far as the labor of the persons bound to work on said road shall enable him;* and if such labor shall be insufficient, the county commissioners shall cause the same to be cut out and opened at the expense of the county, "*whenever, in their opinion, the funds of the county will justify such expense.*"

Section 68 provides for the assessment of damages where new roads are laid out, and that the award "shall be laid before the County Commissioners' Court for consideration, who shall examine the matter, and should they decide the amount of damages is not

unreasonable, or more than should be given, and that the opening and improving of the road is called for by the public interest, *and the finances of the county will justify,* they, in that case, will approve and accept the award, *and order the money to be paid.*"

These provisions clearly indicate that the County Commissioners' Court had no manner of power to borrow money for any of the purposes mentioned in the order of June 8th, 1871, and, furthermore, that said Court had no authority to contract debts for any such purpose in excess of the tax to be raised for the current year. The limitation upon the right to raise taxes for these purposes beyond a certain per cent. is positive, and that the expenditures for these purposes for any one year were intended to be confined to the amounts to be produced by this per cent., and by road labor and fines and penalties is equally clear. Every expenditure is required to be made with reference to the state of the county finances, and only in cases where such finances will justify it, have the commissioners the right to incur the expense. And in such cases the statute does not confer the right to borrow money, but simply directs the commissioners *to order the money to be paid.* Evidently all this can only mean that the commissioners, having first ascertained that the per cent collected, or to be collected, for the current year is sufficient to justify the expense. may order the money to be paid. In this case the order of June 8th, 1871, in express words, shows the finances of the county did not justify the proposed expenditures, and that the per cent. for road tax was insufficient.

In the case of Commissioners of Highways vs. Newell, 80 Ill., 587, the foregoing view is sustained. In that case the Court holds that the Commissioners of Highways have no legal power to incur indebtedness for road and bridge purposes, in any fiscal year, beyond the amount of the taxes already levied for that year. In other words, they can in no one year expend lawfully more than the tax levied for that year, and if they incur an indebtedness over and above the amount of such tax in any one year, it does not bind the township The limitation on the taxing power of the Highway Commissioners in that case was no stricter than it was on the power of the County Court in this case.

We think, also that the case of Gause vs. Clarksville is to the same view. We claim the order was illegal, the county not having the right to borrow money, but only to raise it by taxation. The collector collects the taxes as the law provides, and the money is paid to the County Treasurer, who gives bond and is responsible for it. All the money belonging to the county should be received by and be in the Treasurer's hands. The County Court had no power to authorize the County Judge, Wm. T. Brown, to borrow money. and act as County Treasurer, usurp the duties of that officer, and that without bond. Plaintiff does not attempt to show that upon the issuing of these bonds any money was derived that ever went in the county treasury, or that the county ever got any benefit from them. or that any money was ever actually paid for them by him or anyone else : he rests alone upon the orders of the County Court, which it had no power to make.

Under these circumstances, can the plaintiff recover?

We have failed to find any case holding under facts similar to this case, that such an action can be maintained. The defendant is a corporation, having only such powers as are expressly delegated to it; everybody is presumed to know the law, and a person in dealing with such corporations knows that the acts of the corporation are illegal and void if it has not the power to do the act. It is the person's duty to ascertain that fact before dealing with the corporation. The law requires him to do it.

This Court, in the following decisions, thus expresses this doctrine:

In Marsh vs. Fulton County, 10 Wall, p 676: "But it is earnestly contended that the plaintiff was an innocent purchaser of the bonds without notice of their invalidity. If such were the fact, we do not perceive how it could effect the liability of the County of Fulton. This is not the case where the party executing the instrument possessed a general power to contract, and where the instrument might for such reason be taken without special inquiry into their validity. It is a case where the power to contract never existed where the instrument might, with equal authority, have been issued by any other citizen of the country. *It is a case where the holder was bound to look to the action of the officers of the county and ascertain whether the law had been so far followed by them to justify the issue of the bonds.*"

How much more must this be the case when the county had no power whatever to issue any bonds?

In Town of South Ottawa vs. Perkins, 94 U. S, p. 269: "Not only the courts, but individuals, are bound to know the law, and cannot be received to plead ignorance of it. The holder of the bonds in question can claim no indulgence on that score, and can take no advantage from the allegation that he is a bona fide purchaser without notice. He would, it is true, be precluded from doing so on another ground, namely, want of any legislative authority in fact in the town to issue the bonds in question. Want of such authority is a fatal objection to their validity, no matter under what circumstances the holder may have obtained them."

In McClure vs. Township of Oxford, 94 U. S. R., p. 432: "To be a bona fide holder, one must himself be a purchaser for value without notice, or the successor of one who was. Every man is chargeable with notice of that which the law requires him to know, and of that which, after being put upon inquiry, he might have ascertained by the exercise of reasonable diligence. Every dealer in municipal bonds, which upon their face refer to the statute under which they are issued, is bound to take notice of the statute and all its requirements."

To the same effect, County of Bates vs. Winters, 97 U. S R., 83.

In Anthony vs. County of Jasper, 101 U. S. R., p. 697: "Dealers in municipal bonds are charged with notice of the laws of the State granting power to make the bonds they find in the market. This we have always held. If the power exists in the municipality, the

bona fide purchaser is protected against mere irregularities in the manner of its execution, but if there is a want of power, no legal liability can be created."

Such being the law, if the person neglects his duty, and does not ascertain the law, or, knowing it, acts defiantly, taking his chances, he must take the consequences. He cannot ask the Courts to restore him to his original status. By his participating in the illegal acts of the county officers, being an actor with and assisting them, he is *in pari delicto,* and the Courts leave him where they find him. If this were not the law, a municipal corporation could, by acts beyond its powers bind itself, do indirectly what it could not do directly.

The county had no power to borrow money and give interest-bearing orders for it, yet if the person from whom the money was borrowed could sue the county and make it liable for the money so obtained, the same end, the same object, would indirectly be obtained as if the county possessed the power in the first place; the indebtedness would be saddled upon the county which it was intended to prevent by refusing to give the county the power to contract such indebtedness. If the intention of the law could be evaded in this manner, the constitutional limitation regarding the amount of indebtedness of such corporations would practically be worthless whenever it was desired to avoid it For instance, a county is indebted according to the last assessment within $10,000 of the constitutional limitation. It desires to build a new court-house costing $100,000. It has power to contract for a $10,000 court-house, but for no more. Yet the County Court orders the building of a $100,000 court-house, and orders the issuing and sale of county bonds to raise the money. If the parties proposing to buy the bonds would examine into the affairs of the county, as the law requires them to do, they would discover the bonds were illegal and not purchase them—not loan the county money it had legally no power to borrow. Yet the parties purchased the bonds. The county builds its court-house, the bonds are then ascertained to be void, and the parties now wish to surrender the bonds, and recover judgment against the county for the $90,000 so received by it. They wish their illegal act in loaning the money legalized. They wish the courts to create a power for the corporation it did not possess. They wish the court to restore to them money voluntarily paid, to declare that the corporation is indebted when the law never intended it to be, and when it never would have been if they had done their duty—had not been negligent in the first place. As well might a party ask the courts to allow a judgment against a minor or an idiot for money loaned them, which they spent. If such were the law, what would prevent the purchaser of bonds from sueing and recovering his money against a city, county, town or school district which had issued bonds reciting on their face that they were issued by virtue of a resolution to issue $20,000 of bonds, the proceeds derived from the sale to be donated to a manufacturing company for locating and carrying on its business in its territory, although the bonds were issued in direct violation of the constitution, and were void? Yet if it merely required the money to be paid in the treasury, what would prevent, if this novel doctrine is

correct, the recovering of the money back, when the party, by so paying it, enabled the donation to be made, enabled the municipality illegally and indirectly to become indebted, against a positive constitutional prohibition to that effect?

We think the above illustrations clearly show the logical result and the disastrous consequences which would follow from the establishment of the doctrine contended for by the plaintiff.

There are several cases reported in which it is claimed this action has been sustained, or it has been intimated by the court that it ought to be sustained, but we apprehend that in each of those cases there is a wide difference between the facts in them and the case at bar, and that while the application of this remedy might, under the peculiar circumstances of those cases be just and legal, yet not being parallel in principle they would be no authority in this case.

One of those cases, the County of Jackson vs. Hall, 53 Ill., 440, counsel referred to in their brief in the Circuit Court. In this case there was a valid contract to build a jail, which the County Court had the power to make, as the Supreme Court in the case expressly decides. It was built and accepted by the county, and bonds issued for part of the indebtedness. The county afterwards repudiated the bonds, and suit was brought on the original contract; the declaration contained the usual counts for work and labor and materials furnished, and the money counts. The court held that the county, having accepted the jail and agreed to pay for it, must do so. They then use this language: "It is next urged that the action will not lie, because there was a contract to receive county indebtedness, and the action is for money. It is a well established rule of practice, fully and repeatedly recognized by the court, that where a contract has been performed, and nothing remains to be done but the payment of the money, a suit may be maintained on the common counts. In this case appellee completed the building to the satisfaction of the county authorities, who accepted it, and have appropriated it to the use of the county, and have refused to pay the bonds given for its payment, and deny their validity. Having repudiated the bonds, they cannot now say that suit should have been upon them. Having solemnly refused to pay the bonds, and refused to pay the interest, and denied their validity, appellee has the right to treat them as invalid, and to proceed for a recovery of the amount acknowledged to be due when they settled and accepted the jail. If he chooses to accede to their declaration that the bonds are void, they are estopped from now insisting that they are valid, and appellee may recover under the common counts."

Here the bonds were never declared void; the county, however, thought they were, and repudiated them. Hall, without testing the validity of the bonds, sues for the amount admitted to be due him when he settled with the county and the jail was accepted. In that case the county had power to make the contract, did make a lawful contract and receive the entire benefit of that lawful contract, certainly upon every principle of law or justice the county should have paid this lawful debt. In the case at bar the county

had no power to issue the bonds or orders upon which it is claimed they are based, had no power to make the contract, no power to receive the benefits of such illegal contract, and it never would have been attempted if the taker of the bonds had done his duty, had acted with prudence. In one case the plaintiff was party to a legal contract, in the other a party to one that was illegal. The distinction between the two is very apparent.

In the case of Buchannan vs. Litchfield, 102 U. S. R., p. 293, the only language in reference to this point, used by the court, is as follows: "Whether the city is under legal obligation to make restitution of the money, obtained without authority of law—that is, to refund to the proper party, or parties, such sum or sums *as were actually received by its authorized agents or officers* upon the sale of the bonds, is not a question arising in this present action." The court thus not deciding the question.

In the case of Louisiana vs. Wood 12 Otto, p. 294, and which is the case most relied on by counsel for plaintiff, in his brief, the decision was based upon the fact that the money was paid by mistake, the city having antedated the bonds so as to make them legal, and also that the city had the power to borrow money. Chief Justice Waite uses this language: "It is a rule of common law that an action lies for money paid by mistake, or upon a consideration which happens to fail, or for money got through imposition. The present action can be sustained on either of these grounds. The money was paid for bonds apparently well executed, when, in fact, they were not, because of the false date they bore. This was clearly money paid by mistake. The consideration upon which the payment was made has failed, because the bonds were not, in fact, valid obligations of the city, and the money was got through imposition, because the city, with intent to deceive, pretended that the false date the bonds bore was the true one While, therefore, the bonds cannot be enforced because defectively executed, the money paid for them may be recovered back."

"It certainly would be wrong to permit the city to repudiate the bonds and keep the money borrowed on their credit. The city could lawfully borrow. The objection goes only to the way it was done. As the purchasers were kept in ignorance of the facts which made the bonds invalid, they did not *knowingly make themselves parties to any illegal transaction.* They bought the bonds in open market, where they had been put by the city, in possession of and clothed with authority to sell. The only party that has done any wrong is the city."

In that case the city had power to borrow. In this case the county had none. In that case there was deception practiced on the bondholders. Everything was all right on the face of the bonds—the city had the power to issue them, and on their face they were all regular; the trouble lay in the deception, the fraud practiced in making them thus appear all regular on their face. In the case at bar there was no power to issue the bonds, but no deception was practiced by the county; the bonds themselves refer to the orders by which they were issued, which orders show that their issuance was illegal. In that case the right to recover is

based upon the ground that the city had the power to borrow, but practiced fraud and deception in issuing the bonds, in the manner of exercising that power, and the purchasers did not *knowingly make themselves parties to the transaction* Then in this case, when there is no power to borrow, and no deception practiced, and where the purchaser's attention was particularly called to the orders under which they were issued, enabling him to examine them and thus easily perceive they were illegal, would not the same court say *they knowingly* made themselves parties to the same transaction, and cannot recover?

In the case of Gause vs. City of Clarksville, 19 Albany Law Journal, p. 253, where the bonds issued were declared void, because the city did not possess the power to issue negotiable securities, Mr. Justice Dillon said: "But the plaintiff may amend, and add, in respect of these bonds, counts in the nature of counts for money had and received. Adhering to the decision of this court by Treat, J., in Wood vs. Louisiana, at the last term, the present holder of the bonds will then be treated as the assignee of the original holder or payee, in respect of the money actually lent to the city; and if, after the city obtained it, the same was in fact expended for the erection and repairs of wharves, or the improvement of streets, or, possibly, if expended for other authorized municipal purposes, the amount advanced may be recovered.

Burroughs, in his work on public securities, page 510, uses this language in reference to the cases of Woods vs. Louisiana and Gause vs. City of Clarksville, *supra:* "We do not understand these cases to assert the broad proposition that whenever the bonds of a city, for which it has received value, are declared void for want of power either in the officers of the city or the city itself, that the holder of the bond is entitled to recover the amount paid for the bonds." "In Gause vs. City of Clarksville, the right to recover was made to depend on the fact that the holder could show that the money received was applied for some authorized municipal purpose. And in the city of Louisiana vs. Wood, the city was authorized to borrow money, but not in this mode. It had no power to ante-date bonds so as to avoid the effect of the statute. In the words of Chief Justice Waite, "The city could lawfully borrow; the objection was only the way it was done." On page 285, commenting upon the case of Gause vs. City of Clarksville, the learned author uses this language: "It admits of very grave doubt whether the doctrine here announced is not erroneous. If a municipal corporation stood before the law in all respects as an individual or private corporation, then, undoubtedly, when it was shown it had received and used the money of another, upon a security which cannot be enforced, which is void, it ought to be compelled to return it to the owner." "It is just here, however, that the broadly marked distinction between the two appears. An individual or a corporation, for profit, may make any contract not prohibited by law; a municipal corporation, being a mere governing agency, possesses such powers alone as the Legislature sees fit to delegate it. Its powers are express; whether it be the power to contract or to do anything else, there is no implication; we must look to the charter to see whether the power exists The powers

of these municipalities are matters of public law, and the purchaser of its securities, void for the want of power to issue, purchases with knowledge of their character. If he is entitled to recover the money advanced in any form, he defeats the policy of the Legislature of the State, which refused, in enacting the charter, to vest the municipality with the power to make such a contract, and especially is this true of bonds given in aid of railroads and other internal improvement companies—a purpose confessedly beyond the ordinary municipal powers. Such a doctrine would, in another form, afflict the people with all the evils to be feared from the doctrine of implied powers." Judge Dillon, with a master hand, draws a frightful picture of the evils resulting from the doctrine of implied powers in Gause vs. Clarksville, to which we especially call the attention of the Court.

In Iowa there is a constitutional limitation similar to the one in the State of Illinois about cities, counties, &c., becoming indebted. Bonds were issued by a school district in excess of the five per cent. of the value of the taxable property in the district; the proceeds of the bonds were used for the erection of school buildings; the bonds were declared void, and then the Legislature passed an act giving the holders of the bonds a lien on the materials used in erecting the school building. The Supreme Court in Mosher vs. Independent District of Ackley, 44 Iowa, p. 120, held that this was an attempt to change the nature of the indebtedness prohibited by the Constitution, and the act was declared unconstitutional and void. "The Legislature," says the Court, "have no more power than the school district to provide means for the collection of the debt; the Constitution applies to both." The difference between that case and this is in that Mosher went to the Legislature to try and collect through it his illegal claim, while the plaintiff here expects the Court to enforce his claim by holding that the county is indebted to him, when by law the county did not possess the power to become indebted.

By the statutes of Massachusetts, of 1875, c. 209, entitled, 'An Act to Regulate and Limit Municipal Indebtedness," it is provided in § 2 that "No debts shall hereafter be incurred by any city or town, except debts for temporary loans in anticipation of the taxes of the year in which such debts are incurred, and of the next year ensuing, and made payable therefrom by vote of said city or town, except as hereinafter provided." Section 3 provides that "Debts, other than those authorized by the second section of this act, shall hereafter be incurred by a town, only by a vote of two-thirds of the legal voters present and voting at a legal meeting," and by a city only by a two-thirds vote of both branches of the city council. It is provided, however, by § 10, that these restrictions shall not exempt any city or town from its liability to pay debts contracted for purposes for which it may lawfully expend money. Under this statute the Supreme Court of Massachusetts, in Agawam National Bank vs. Hadley, 128 Mass., p. 503, held that since the passage of this statute an action cannot be maintained against a town on a promissory note given by its treasurer for borrowed money, unless the vote of the town authorizing the treasurer to borrow money

shows either the debt was in anticipation of the taxes of the year in which the debt was incurred, and of the year next ensuing, and expressly made payable therefrom, or that the vote was passed by two-thirds of the legal voters present and voting at a legal meeting."

If a town treasurer borrows money in a manner unauthorized by this statute, the lender cannot maintain an action against the town to recover it back, although the money is used by the treasurer in payment of the debts of the town.

Colt, J., in that case, uses the following language which applies with equal force to this case, viz.: "The statute thus deprives cities and towns of the authority to contract debts for borrowed money, which they had previously possessed, whether derived from express grant, or held to exist as an implied power; and, instead of it, gives these municipalities a limited power which can be lawfully exercised only in the mode specially pointed out. It contains a positive prohibition of all debts contracted for borrowed money in any other mode. The plain object of the law is to protect cities and towns from the creation of municipal debts without sufficient necessity and consideration, and without proper provision for payment, and to prevent improvident and reckless expenditure of public money, as a natural consequence of debts so contracted. All its provisions, reasonably interpreted, with reference to these salutary ends, must be regarded as prohibitory. They establish a plain limit to the exercise of the power to borrow money."

"But the plaintiff contends that it is entitled to recover upon the last count in the declaration for money had and received; and, at the trial, offered to show that the money paid or credited to the town treasurer upon the notes in suit was used by him in payment of the debts due from the town. This evidence was properly rejected. It fails to show that the money was received in its corporate capacity, or that the act of the treasurer applying it to the payment of its debts was ever authorized or ratified by the town. The difficulty is that the money was paid to one who had no authority as treasurer or agent of the town to receive it in the name of the town and apply it in payment of the town debts. If a town could be held for money had and received, under such circumstances, then the purpose of the second and third sections of the statute would be wholly defeated. It makes no difference that the treasurer used this specific money in payment of the town debts. There is nothing to show any appropriation of such payments by the town to its own use, or any ratification of the act. The money in the hands of the treasurer did not belong to the town. For all that appears, funds may have been previously supplied by the corporation from other sources for the payment of these very debts. The relations of the treasurer to the town are not disclosed; he may then have been, and may now be, a defaulter to more than the amount of the alleged payments. The treasurer is an independent accounting officer. Hancock vs. Hazzard, 12 Cush., 112. If he applies money unlawfully obtained to the payment of the town debts, that fact alone creates no liability on the part of the town to refund the money to the party from whom it was obtained."

"It was decided in Kelly vs. Lindsey, 7 Gray, 287, that money ad-

vanced on account of the defendant to one in his employ, but who had no authority to borrow money for him, created no debt against the defendant, although advanced for the purpose of being expended in his business to pay his debts, and actually so applied. It was said by Dewey, J , that "no one can thus make himself a creditor of another by the unsolicited payment of his debts; and it is not enough to create a liability, that the defendant had the benefit of the money." And in Railroad National Bank vs. Lowell, 199 Mass., 214, which was an action for money had and received, it was decided that the action would not lie, although the money in question obtained by the city treasurer without authority from the city, was put into the drawer with the money of the city, and paid out for city debts, the treasurer being a defaulter to the city for an amount larger than that drawn from the bank. This decision upon the point now under consideration is conclusive."

"It is said that an action for money had and received may be maintained against a municipal corporation, when the money has been received under such circumstances that, independently of express contract, the obligation of repayment is imposed as a matter of right and justice. This, when it is received under a contract made without authority, or in violation of law, the duty arises to refund the money to the party from whom it was received, if, without affirming the illegal contract, the latter seeks only to recover his own money and prevent the defendant from unjustly retainining the benefit of his own illegal act. Morville vs. American Tract Society, 123 Mass., 129; Dill vs. Wanham, 7 Met., 438; White vs. Franklin Bank, 22 Pick, 181."

"But in such cases it must appear that the money was actually and beneficially appropriated by the town or city in its corporate capacity. It cannot be treated as appropriated, merely because it has been applied by the unauthorized act of the town treasurer, or any other person, to the payment of municipal debts, for the payment of which other provisions had been made. It is sometimes said, indeed, with reference to money borrowed in disregard of positive prohibition, when both parties are in fault, that it cannot under any circumstances be recovered back, because that would be to defeat the prohibition in favor of the guilty party. McDonald vs. Mayor, &c., New York, 68 N. Y., 23; Parr vs. Greenbush, 72 N. Y., 463 472; Herzo vs. San Francisco, 33 Cal., 134; Argente vs. San Francisco, 16 Cal., 255-282 See also Dillon on Mun. Corp., § 383."

In the case of Thomas vs. The City of Richmond on page 356, this court use this languge, which we think applies aptly to this case, viz.: "But in the case of municipal and other public corporations, another consideration intervenes. They represent the public, and are themselves to be protected against the unauthorized acts of their officers and agents when it can be done without injury to third parties. This is necessary to guard against fraud and peculation. Persons dealing with such officers and agents are chargeable with notice of the powers which the corporation possesses, and are to be held responsible accordingly. The issuing of bills as a currency by such a corporation without authority is not only contrary to positive law, but being *ultra vires*, is an abuse of the public franchises which have been conferred upon it; and the

receiver of the bills being chargeable with notice of the wrong is in *pari delicto* with the officers, and should have no remedy, even for money had and received against the corporation upon which he has aided in inflicting the wrong. The protection of public corporations from such unauthorized acts of their officers and agents is a matter of public policy in which the whole community is concerned. And those who aid in such transactions must do so at their peril."

In almost the language of this decision is it not the law to say Madison County was prohibited from borrowing money and issuing bonds, it issued these bonds without authority of law, the issuing the same is not only contrary to law, but being *ultra vires* is an abuse of the public franchises which have been conferred upon it; and the receiver of the bonds, being chargeable with notice of the wrong, is in *pari delicto* with the officers, and should have no remedy even for money had and received against the corporation upon which he has aided in inflicting wrong.

In Hogan vs City of Buffalo, 2 Denio, p. 110, it was held that the Common Council of the City of Buffalo have no authority to furnish an entertainment for the citizens and guests of the city at public expense. Accordingly, it was held that an action would not lie against the corporation at the suit of one who had provided such entertainment on Independence day upon the employment of a committee authorized by the Common Council to contract for it.

In the case of Swift vs. City of Williamsburg, 24 Barb., 427, the syllabus is: "The powers possessed by the Common Council of the late City of Williamsburg to open, regulate, grade and pave streets, &c., instead of being general, were, by the law conferring these powers, made subject to certain important restrictions and limitations. No proceeding could be taken to open, regulate, grade or pave any street or avenue, except upon petition signed by one-third of the persons owning land situated within the assessed limits. These provisions of law being public, and all the preliminary proceedings leading to the determination of the Common Council to make a particular improvement, being matters of public record in the office of the City Clerk, all persons are chargeable with notice of the law and of such proceedings."

"If, therefore, an individual enters into a contract with the corporation, for improving a street, he cannot after having performed a portion of the work, maintain an action against the corporation to recover damages, on the ground that he was induced to enter into such contract, and to perform the work upon the false representations of the defendants, that one-third of the owners of the lands to be assessed had petitioned for the improvement, and that the corporation had taken the necessary proceedings to authorize them to make the same; whereas, no such petition had in fact been presented, and the corporation had no power to cause an assessment for the expense of the improvement to be made, or to contract with the plaintiff for the performance of the work.

On page 432 the court says: "It is obvious that the restrictions and limitations imposed by law can not be evaded. The consent

of the parties interested in such improvements can not be dispensed with; the responsibility which the conditions precedent created by the statute impose, can not be thrown off in this manner. For the effect of doing so is to shift entirely the burden of making these local improvements; to relieve those on whom the law sought to impose the expense and to throw it on others who are not liable either in law or in morals. . . . . The plaintiff seeks to impose the expense on the tax-payers of the city generally. He is not entitled to the help of this court to effect that purpose."

Thus we find the adjudicated cases, and we think the principle to be deduced from them is that where the bonds were issued without any legal authority, where they are void, or where a party pays money to an officer of a municipal corporation or receives therefor its obligation which the corporation had no power to make and the officer to give, such person acts with full knowledge of the law and acts in violation of it, acts with the officers of the corporation, assists them to try and do what the law does not permit that he is in *pari delicto*, and the courts leave him when they find him and will not assist him to recover his money.

In this case there is a total want of power to borrow, the Legislature having never delegated that power to the county, no deception was practiced, the bonds, the coupons recited on their face the order of court upon which they were issued. The whole fault lies with the purchaser in not examining the law, in voluntarily paying the money, and thus by his act in giving the money to a county officer endeavoring to make the county become indebted in a manner not allowed by law to saddle upon the people an illegal burden. In the language of the Supreme Court of Illinois in Gaddis vs. Richland County, 92 Ill., p. 126, "As a general rule no person can acquire rights under a void instrument. Such is the case with forged paper and paper issued without authority, and void, the purchaser acquired no right under them."

In discussing the third point of our brief we have also pretty fully discussed the fourth point we made, which is that, admitting, for the sake of argument, that a recovery could be had against the county, then in any event it would be only after the plaintiff has proven, 1st, That he is the owner of the bonds; 2d, That he paid a valuable consideration for them; and, 3d, the consideration so paid went into the county treasury, was accepted by the county, and was expended for some legitimate purpose authorized by law.

In Wood vs. Louisiana, the plaintiff proved both he purchased for value, also that the proceeds of the sale were applied to the payment of the outstanding indebtedness of the city as to part, and the balance was paid in the treasury of the city.

In Gause vs. City of Clarksville, the bonds were issued to raise money to improve her wharves. It was held upon proof that the money allowed on the bonds had been used by the city for the purpose of improving its wharves, or for any other authorized municipal purpose, he could recover that amount. The holder also proved he purchased for value.

In the case of Parsons vs. Monmouth, 70 Me., 262, where the treasurer had borrowed money and given the note of the town for the same, when he had no power to do so, nor the town the power to borrow money, and the treasurer testified he used the money so borrowed for the benefit of the town, but could not tell how or to whom paid. The court held: 1st, There could be no recovery on the note; 2d, No recovery for money had and received because the evidence did not satisfy the court that the money ever went for the benefit of the town. The court distinguished this case from that of Gause vs Clarksville, *supra*. If the evidence in the case of Parsons vs. Monmouth was held insufficient, how much more so can this court hold it insufficient in this case, where there is not a particle of evidence introduced to show that any money ever went into the county treasury or was in any way expended for the county that was derived from the sale of these bonds?

This is one line of decisions, and in the cases of Agawam National Bank vs. South Hadley, Kelly vs. Lindsey, Railroad National Bank vs. Lowell, Thomas vs. City of Richmond, Hedges vs Buffalo, and Swift vs. Williamsburg, *supra*, the courts hold that even with such proof there can be no recovery. If this court considers the latter line of decisions the law, that ends the case. If the former are to be regarded as the law, we claim that plaintiff has failed to bring himself within either the letter or spirit of those decisions.

What is the proof about plaintiff being the owner?

He has tendered and surrendered the bonds and coupons into court, and offered them in evidence with two orders of the County Court, and showed the payment by the county of a number of the coupons, but to whom or for whom paid does not appear. This is the plaintiff's evidence in all its fullness. The bonds are payable to the "Alton National Bank or bearer," and have never been indorsed by the bank. This is requisite before they can pass from hand to hand by delivery, and before mere possession can be considered proof of ownership, as in cases where bonds are payable to "bearer" simply. In the case of Garvin vs. Wiswell, 83 Ill., 215, it is held that a county bond or order payable to bearer is negotiable by delivery without being indorsed, and the legal title will pass the same as a bank-bill, by delivery, but that a county bond or order payable to a *person therein named*, or bearer, cannot be transferred so as to vest the legal title, except by indorsement of the payee, but the equitable title may pass by a sale and mere delivery. (Sections 3 and 4, Gross' Statutes, 1869 p. 461, cited in the opinion of the court, are the foundation of this ruling.) As negotiable paper in this State is governed by statute, and not by the general commercial law, we apprehend this court will follow the construction given to the statute by the State Supreme Court in that case. It is evident that this action is not properly brought in the name of the present plaintiff. If he were really the equitable owner, the action should have been in the name of the Alton National Bank for his use, the legal title never having passed out of the bank. But there is no proof that he is even the equitable owner. The indorsement on the bonds made by one Virgil Warren "to C. A. Caldwell,

or order, for collection," unexplained, discredits the idea that Thompson M. Warren has any title whatever. There should be such evidence of equitable title in the record as would render it safe for the County of Madison to pay the money to the plaintiff. As the matter now stands there can be no assurance whatever that the county would not have to pay the Alton National Bank or Virgil Warren at some future time after having once paid the plaintiff. There is no evidence that the plaintiff or the first holder or any other holder of the bonds ever paid any value for them, and there is no evidence that ever one dollar of the money derived from the sale of the bonds ever went into the county treasury, or that one dollar was expended for the county in any legitimate purpose allowed by law.

To allow a recovery under such circumstances would be to extend the doctrine announced in the cases of Wood vs. Louisiana and Gause vs. City of Clarksville, and which while perhaps it is questionable even if sound law, in those cases, certainly should never be extended by the courts so as to allow a recovery where there is a total want of power in issuing the bonds, and where there is no proof that the county ever received any of the proceeds derived from the sale of the bonds. The presumption in such case would be that the transaction, being illegal, that the county never received any benefit from it, and it devolves upon the plaintiff to prove it did, and lack of such proof we regard as fatal to any recovery by the plaintiff.

The fifth point we made is that interest can not be recovered against a county in the State of Illinois. * * * * We are aware that this court in Walnut vs. Wade, 103 U. S. R., p. 696, use this language: "It is next alleged error that the Circuit Court allowed interest on the coupons sued on to be included in the judgment. The coupons bore interest from the day they were payable. Aurora City vs. West, supra; Clark vs. Iowa City, supra; Town of Genoa vs. Woodruff, 92 U. S.. 502. There is nothing in the act authorizing the issue of the bonds to which the coupons belonged that takes them out of these decisions. And we have been referred to no legislation in Illinois which forbid the allowance of interest on this kind of commercial paper." We will now refer the court to the law of Illinois on this subject.

In discussing this point for the sake of the argument, we concede that the plaintiff at the time the bond was issued had an ordinary legal claim against the county, had settled with the county, and the county had issued to him an order for the amount.

Our Supreme Court in the early case of Madison County vs. Bartlett, 1 Scam, p. 67, held a county is not bound to pay interest on orders. The court in that case gave a construction to our interest statute which has been followed by several decisions to the same effect, so that the law may be considered as settled on this point in this State. The court say on page 70: "It is a principle of the common law, that the government, and by parity of reasoning, a

county can not be guilty of laches. It is also settled a State is not barred by the statute of limitations unless expressly named. Interest is not given by the common law, for a failure to pay money when it is due, unless the parties have so agreed, and is only allowable by statute when the party neglects to pay at the time stipulated, and is then given in the nature of a penalty for the violation of a contract.

* * * * Again, the statute of this State which allows interest to creditors 'for all moneys after they become due' does not by name include the State or counties. From this omission, is it not fairly inferable, that had the Legislature intended to compel the State or counties to pay interest when they had not contracted to do so, that they would have been specially named? This inference is strongly supported by the fact that the Legislature in 1819 passed a statute requiring interest to be paid on Auditor's warrants. If Auditor's warrants bore interest by the general statute regulating interest, this special act would be unnecessary. The general practice of the community is also some evidence of what the law is on the given subject. Has interest then, been generally allowed on county orders? We understand not . . . From the best consideration that we have been able to give this subject, we can come to no other conclusion than that a county is not bound to pay interest on county orders in the absence of an express contract to pay it."

The case was followed by the County of Pike vs. Hosford, 11 Ill., p. 170 the language used is as follows, viz.: "This court, in the case of Madison County vs. Bartlett, 1 Scam. 67, decided that counties are not bound to pay interest on county orders, in the absence of an express agreement to pay it. That decision seems to be conclusive of this case. If an order drawn on the settlement of a demand against a county does not bear interest unless it is so expressed in the order, it is very clear that interest will not run on an unadjusted cause of action on which interest was not originally agreed to be paid. There is no provision of law, requiring county orders to be drawn payable with interest, and the contract between the parties did not provide that interest should be paid after the money became due. The parties contracted with reference to the laws governing contracts made with counties, and prescribing the mode of obtaining payment."

In the case of County of LaSalle vs. Simmons, 5 Gil., 513, the court held in that case, that the county was liable to pay interest, but in that case the money was practically extorted from Simmons, and the court held that, under such circumstances, he ought to have interest; the case is entirely different from the one at bar, and in the light of the decision in County of Hardin vs. McFarlan, 82 Ill., p. 138, it is very questionable if not entirely overruled. In this latter case the following language is used: "The statute provides fully the mode and the only mode by which the debts of a county can be paid. Public municipal corporations, as counties are, must, like private corporations, act within the grant of their powers and not beyond. The Legislature, well knowing the con-

dition of the several counties in the State, and that they might be involved in debt to a greater or less extent, provided in their wisdom, ample means by which their debts could be paid and to those means they must be confined. To suffer them to devise other means might, in many instances, be destructive of the best interests of the people. . . . . We fail to discover, in any statute in force when these bonds were issued, *any power in the several County Courts to issue interest bearing orders,* and we are satisfied no such power existed The County Court could exercise no discretion in this matter it was controlled by positive law."

This decision was affirmed in Hall vs. Jackson, 95 Ill., 352.

In the case of County of Jackson vs. Rendleman, 100 Ill., p. 379, it was held that a county board having power to contract for the repair of its court house, and the building of fire proof safes, without restriction as to the amount it shall pay, or mode of payment, may contract to pay for the same in interest-bearing orders upon the county treasury, and such orders will be valid and the interest collectable On page 384 the court say, "The interest clause in the orders here was a part of the contract price of the work. It was under the agreement that the orders should bear ten per cent. interest that the work was contracted to be done, and was performed. The interest provision regulated the amount of the price bid, and contracted to be taken, for the work. With such provision the county has got the work done at a less price than it would have done without it. The work has been done as it was contracted to be performed, and the contract price should be paid as it was contracted to be paid."

The Supreme Court of the State of Illinois in the cases of Gledden vs. Hopkins, 47 Ill., 525; School Directors vs. Sippy, 54 Ill., 287; Peers vs. Board of Education, 72 Ill., 508, held to the same strict law in regard to orders issued by school directors: and in City of Pekin vs. Reynolds, 31 Ill., 530, and Chicago vs. People ex rel., 56 Ill., 334, held similarly to orders issued by cities or municipal corporations.

Thus we regard the law settled in this State, the earlier decisions and the late decision of County of Jackson vs. Rendleman, supra, holding that counties cannot be compelled to pay interest unless there was an express agreement to pay, and in the late cases of County of Hardin vs. McFadden, and Hall vs. Jackson, *supra*, the court expressly deciding that County Courts have no power to issue interest-bearing orders, or, in other words, to make any contract to pay interest.

In all the cases that have been before this court arising under the laws of Illinois regarding the validity of county, city and township bonds issued in aid of railroads or other purposes when this court found the same to be valid, and allowed interest we think upon an examination of them it will be discovered: 1st, that there was either a special statute or a general law authorizing the issuing of the bonds upon a vote of the people; 2nd, that this law provided the rate of interest the bonds were to bear. In such cases the law

itself made express provision for the interest as well as the principal.

Either line of the Illinois decisions would not help plaintiff. He has no valid express agreement to be paid interest. The contract he made was void, and he now sues, not on the contract, but for his money. He has no contract for his money or interest on it, so that plaintiff does not bring himself in the line of the earlier decisions, if not overruled, in the case of County of Hardin vs. McFadden, on this point, as we contend.

This being the law, if plaintiff, instead of having an invalid or no claim, or, at best, an uncertain and unliquidated claim against the county, had a certain liquidated claim against the county, or, better still, had, after settlement with the county, obtained from the county, at the date of the bonds, an order for the $4,000, this order, under the law, would not bear any interest.

The Supreme Court having thus in this State construed the statute and settled the law, the federal courts will follow these decisions, the rule being, that the judicial department of a government is the appropriate organ for construing leglislative acts of that government. The construction given by the courts of a State to a statute of that State is received as true. We do not consider it necessary to quote authorities to sustain this point, it having been the law ever since the case of McKeen vs Delaney, 5 Cranch, 22, was decided in 1809 by Chief Justice Marshall.

The last point we make in our brief is, that if a recovery can be had, it must be for what remains unpaid of the original consideration. This conclusion inevitably follows if we are right in the preceding point, for if the County Court by law had no power to make a contract to pay interest, then if any payments were made by the county, it follows they are made on the principal, and must be deducted from it. So here, supposing that plaintiff, at the date of the bonds, had obtained from the county an order for $4 000, and the order read with 10 per cent. interest, which certainly would be putting plaintiff's claim in the most favorable light possible for him, and interest, as it was supposed was paid to plaintiff and received by him for several years, then this money must be deducted from the principal, $4,000, and the plaintiff can only recover for the remainder. This on principle is correct; it is the same as usurious interest paid; if principal and interest are all paid it cannot be recovered back, but if a part remains due and suit is brought for it, then the defendant can have deducted from the principal all the usurious interest paid.

Mitchell vs. Lyman, 77 Ill., p. 525.

Sanner vs. Smith, 89 Ill., p. 124.

So here plaintiff comes into court and insists he has a claim of $4,000, for money had and received by the county in 1871, upon which it is admitted the defendant paid the sum $2.150, but it was paid as interest and received as interest under the erroneous idea both parties had that the claim bore interest, when by law it did not, not being interest it was part payment of the principal, and the

court will so apply it. The suit of Hall vs. Jackson County, 5 Bradwell, 609, is directly in point. The court say: "We must hold upon the authority of the County of Hardin vs. McFarlan, 82 Ill., p. 138, that the County Court had no power to issue those interest-bearing orders in settlement of an existing indebtedness against the county." . . . . "Although the County Court had no power to make the agreement to pay interest upon this indebtedness, yet if the county had fully paid and satisfied the claims with ten per cent. interest to the date of payment, that would have been an end to the matter, and a suit to recover back the interest could not have been maintained. It is a general rule of law if a party, with full knowledge of all the facts in the case, voluntarily pays money under a mistake as to the law, or the legal effect of the circumstances under which it is paid, he cannot recover it back. But here the demand of the plaintiff has not been satisfied and discharged; the whole matter of the contract is still *in fieri*. The plaintiff has come into court and asks judgment against the county, and that he may have satisfaction of his debt. The proofs show he has a just and valid demand, but also show that he has been paid upon these claims various sums of money. True, both parties understood the debt was bearing interest, but it is evident they were both laboring under a misapprehension of the real character and legal effect of the contract existing between them. The agreement to pay interest was inoperative and void, and must be rejected. The limit of the legal liability of the county was, and is the principal of the debt. The plaintiff, as he stands in the attitude of asking judgment for what is still his due, cannot object because the court deducts from the debt that which has been paid him thereon by the defendant. . . . . The case is somewhat analagous to that of the voluntary payment of usurious interest. If an usurious contract is fully satisfied and discharged, the illegal interest cannot be recovered back; but so long as any part of the principal remains unpaid, the usurious interest paid will be deducted from such principal. . . . . As we have seen the *prima facie* claim established by the plaintiff against the county was $2,179.27. The several sums paid by the county as interest, and which the Circuit Court properly held should be allowed as credits and deducted from the demand proven, amounted to $1,005.05. This would leave $1,174.22 still due the plaintiff, and the judgment below should have been for the latter sum."

This case was appealed to the Supreme Court and the decision of the Appellate Court was affirmed, reported in 95 Ill., 352. The court on page 359 use this language: "A considerable portion of these orders is made up of interest on other orders, and it was conceded as a fact, upon the hearing, that certain sums had been paid by the county and credited in these orders as interest, so that deducting interest paid, and also the interest added in and made a part of the principal sum of these orders the judgment of the Appelate Court is confessedly as large as it ought to be. And the only question, therefore, that remains to be noticed is, was it competent for the County Court to allow or pay interest on common county orders issued for current county expenses? This has been

settled in the negative by Hardin County vs. McFarlan, 82 Ill., 13 8 and we perceive no necessity for re-opening the question."

These decisions clearly sustain our view

If this is the law how does it leave the defendant in error? If this court comes to the conclusion that the orders of the County Court issued on April 21, 1871, and June 8, 1871, are both valid and sufficient upon which to base his claim, and that he has really shown that at the dates of the bonds or subsequently he had a valid claim against the county for $4,000—then deducting the amount paid as interest, $2,150, would leave the balance due, $1,850. But we apprehend in no event can the court hold that the order of June 8 is valid, if so, or should the court find this order valid and the one of April 21st invalid, then the claim would be only $2,000, which has been overpaid by the payments comprising the $2,150 already paid.

We wish the court to distinctly understand that in making the last three points we do not do so because we do not regard the third point as well taken, or as showing that we do not have much confidence in it. We made them that in case the court differed from us on that point, to show the court, first that the plaintiff had not brought himself within the decisions upon which he clamed to recover, and that in any way if a recovery could be had, the money paid by the county, must be deducted from the principal, and if a balance due it is all for which plaintiff, in any event, could obtain judgment. But we regard our third point as the strong point in the case and which we claim upon principal and authority is correct. Since the commencement of our government there have been suits upon bonds which have been declared void, and yet who ever heard of a suit being brought for money had and received for the bonds, and succeeding, until of late years? and these few cases, as we have shown, were cases founded upon peculiarly exceptional circumstances, and the doctrine should not be extended beyond them, and made to apply to all cases generally. If such is done, then corporations can be made liable for all illegal acts of its officers openly perpetrated. County Courts and City Councils can issue bonds to an unlimited extent, and extravagantly use the money, which bonds must be paid, for what difference in effect is it if the bonds are contested and decided void, if the holders can then sue and recover of the corporation the amount for which the bonds call?

Announce this principle and you have struck the death blow to that principle of law which declares that corporations have only such powers as are expressly delegated to them. Announce this principle and you have sounded the funeral knell of that old and wholesome doctrine that limitations, restrictions and checks can be placed upon corporations. Announce this principle and the corporation, the artificial person, by virtue of its implied powers, is as great, can act as fully, as the natural person. If such were the law, then the above principle, instead of being one of the corner-stones in the solid foundation of that grand old structure, the law, would be torn from its resting-place and be broken and destroyed.

The result of such a doctrine would be that extravagance would be the rule and corruption the order of the day in municipal affairs We anticipate no decision having such results.

Respectfully submitted,

CHAS. P. WISE,

Attorney for Plaintiff in Error.

16-622

OFFICE SUPREME COURT U. S.
FILED
DEC 27 1882
JAMES H. McKENNEY, Clerk.

IN THE

UNITED STATES SUPREME COURT,

OCTOBER TERM, A. D. 1882.—No. 1042.

THE COUNTY OF MADISON, *Plaintiff in Error.*

vs.

THOMPSON M. WARREN, *Defendant in Error.*

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

T. C. MATHER,
ATTORNEY FOR DEFENDANT IN ERROR.

SPRINGFIELD:
H. W. ROKKER, PRINTER AND BINDER.
1882.

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BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

The record in this cause does not present any questions which this Court will review, except possibly, the single question, whether the Circuit Court erred in admitting certain testimony offered by the defendant in error at the trial, and to the admission of which plaintiff in error at the time objected.

The record presents nothing else that this Court of review, under its decisions, can pass upon.

This cause was tried, it will be observed, by the Court, without a jury, and by agreement of parties, under Section 4 of the act of March 3, 1865.

The bill of exceptions contain no special findings of fact by the Court, no agreed statement of facts signed by counsel, and no propositions of law presented to the Court, and upon which its ruling was asked.

It contains merely the evidence offered, and admissions made, on the trial, and upon which it appears from the record, the Court found *generally* in favor of plaintiff.

Counsel for plaintiff in error throughout his brief, assumes that this Court will review *this evidence*, and deduce from it ultimate inferences and facts, and then determine whether or not those ultimate inferences and facts are sufficient to sustain the judgment of the Circuit Court.

That the Court will not do this, is too plain, both from the language of the act of March 3, 1865, and from the numerous decisions of this Court upon the subject.

The act provides that judgments may be reviewed by this Court where the bill of exceptions duly presents rulings of the inferior Court in the cause, in the progress of the trial; and provides further, that when the finding *is special*, the review may also extend to the determination of the sufficiency of the facts found to support the judgment.

The first provision above is the only one that invokes at all the review jurisdiction of this Court. It confers, as I conceded in the outset, power to review the rulings of the Circuit Court in admitting evidence that was objected to on the trial. But whether there was any error in that, and if any, the effect of it upon this judgment, I will notice presently.

Without special findings by the trial Court, this Court may not, under the latter provision of the foregoing cited Section, extend its review to determine whether the *evidence* contained in this bill of exceptions justified the judgment or not.

This court has decided that under the foregoing act, it will not assume any of the functions of a jury. Inferences of fact, and conclusions of fact, must be drawn, and found, by the trial court, and not by this court. And the findings of fact by the Circuit Court, *as meant*, are *conclusions* of fact, a statement of the ultimate facts, or propositions, which the evidence is intended to establish, *and not the evidence* on which those ultimate facts are supposed to rest. And it is well settled law that the finding must be sufficient in itself, without inferences, or comparisons, or balancing of testimony, or weighing of evidence. It must not require this Court to balance admitted facts, and deduce from these, the propositions of fact, on which alone a legal conclusion can rest.

Burr vs. *Des Moines Co.*, 1 Wall. 102-3.

Miller vs. *Life Insurance Company*, 12 Wall. 300-1.

Norris vs. *Jackson*, 9 Wall. 125.

Crews vs. *Brewer*, 19 Wall. 72.

Insurance Company vs. *Folson*, 18 Wall. 249.

The ultimate facts and inferences to be found from the evidence of this case, are whether the county of Madison had, and received, money with which it is chargeable by plaintiff, when, and how much, &c. These kind of facts, must be *conclusions* to be reached by weighing and balancing the *evidence* and *admissions*, presented at the trial. These kind of findings are not contained in this record, not pretended to be. And instead of counsel for plaintiff in error having the Circuit Court make *such findings*,

and incorporate them into the record of this case, he simply obtains a record signed by the Circuit Judge, certifying that it set out *all the evidence* introduced, and admitted, at the trial.

There being no special findings in the record, but a general finding by the Circuit Court, this Court will not examine *the evidence* on which this general finding for plaintiff below was made by the Circuit Court, and consequently will not determine whether the *evidence* at the trial, and which is brought forward *in full* in this record, justified the judgment rendered.

> *Insurance Company* vs. *Folsom*, 18 Wall. 248-9.
> *Miller* vs. *Insurance Company*, 12 Wall. 297-300-1.
> *Norris* vs. *Jackson*, 9 Wall. 125.

When the finding of the Circuit Court is general, it includes a mixed question of law and fact, *and concludes both*, except so far as they may be saved by some exception which the party has taken to the ruling of the Court *on the law*.

> *Norris* vs. *Jackson*, *supra*, p. 127.

It is true that counsel for plaintiff in error excepted to the judgment rendered by the Circuit Court at the time, as shown by the record, p. 19.

But that was not an exception to the rulings of the Court, *in the progress of the trial*, as provided by the act of 1865, and hence can not avail him to invoke a determination by this Court, of whether the *evidence* justified the judgment.

In the language of this Court in *Norris* vs. *Jackson*, 9 Wall. 128, which is pertinent here—"If there were such special verdict here, we could examine its sufficiency to sustain the judgment. But there is none. The bill of exceptions, while professing to detail all the evidence, is no special finding of the facts. The

judgment of the Court, then, must be affirmed, unless the bill of exceptions presents some erroneous ruling of the Court *in the progress of the trial.*"

When the trial was concluded, and the evidence all in, had plaintiff in error moved the court to rule, *as a proposition of law*, that the evidence was not sufficient to justify a judgment in favor of plaintiff below, and had such motion, together with the ruling of the Court thereon, been preserved, and presented by the bill of exceptions, or record, then, it is possible this Court might review the judgment in comparison with the *evidence* presented in the bill of exceptions, according to intimations in *Insurance Company* vs. *Folsom*, 18 Wall. 251.

But it is sufficient to say that no such motion was made, nor anything in the shape of a proposition of law presented to the Court, and its rulings thereon asked in the progress of the trial.

"If parties desire a review of the law involved in the case, they must either get the court to find *a special verdict, which raises* the *legal propositions*, or they must present to the Court their propositions of law, and require the Court to rule on them."

Norris vs. *Jackson*, 9 Wall. 128–9.

Insurance Co. vs. *Lea*, 21 Wall. 160.

Miller vs. *Life Ins. Co.* 12 Wall. 303.

Counsel opposed, will not claim, that they did either.

"Such ruling on the propositions of law *as the party may ask, must appear by Bill of Exceptions.*" Ibid. p. 129.

The bill of exceptions in this case show no such *propositions of law asked or ruled upon.*

Hence I repeat there is nothing presented by the record in this case for the Court to pass upon, except, possibly, its rulings in admitting evidence during the trial against objections of plaintiff in error.

The objections and exceptions (Record, p. 19,) were so *general*, and indefinite, that it is questionable whether they do not fall within the ruling of this Court in—

Insurance Co. vs. *Sea*, 21 Wall. 162.

But, assuming they do not, what then is the error complained of?

It is insisted the trial Court erred in hearing and considering all the evidence offered by defendant in error below.

The bonds and coupons brought into court and surrendered, taken in connection with the County Court records also offered, and the admission by the county that it had paid all of the interest coupons on said bonds up to and including those due December 10, 1876, certainly *tended* to prove the issues involved in this case, and afforded grounds for inferences, and conclusions to be drawn therefrom by the trial judge, touching the issues involved.

Anything *tending* to prove the issues is proper evidence, and hence its admission not error.

Prather vs. *Vineyard*, 4 Gilm. 40.

Hough vs. *Cook*, 69 Ill. 581.

But it is said the *indorsements* on the bonds, which the bill of exceptions has it, were *offered* in evidence, did not tend to prove ownership in plaintiff below, consequently were not relevant evidence, and hence the court erred in admitting them.

It may be said first, that every erroneous ruling made by a Court will not afford sufficient ground for reversing, the doctrine being:

"Where a cause is tried by the Court without a jury, and there is enough unobjectionable testimony to sustain the finding of the

Court, it will not be disturbed, notwithstanding the reception of incompetent evidence, as the same harmful effect does not follow in such a case as when before a jury."

Schroeder vs. *Harvey*, 75 Ill. 638.

Assuming that these indorsements were offered in evidence, along with the bonds, as the bill of exception says, and assuming the Court erred in admitting them in evidence even for the purpose of raising an inference that the county obtained money of plaintiff or his transferor which the county ought to refund, how is plaintiff in error damnified by such ruling?

Possession of commercial paper is *prima facie* evidence of ownership.

Bank of Metropolis vs. *New England R. R.*, 1 H. 232.
Chambers County vs. *Clews*, 21 Wall. 323.
Murray vs. *Lardner*, 2 Wall. 110.

Plaintiff in error offered no evidence below to rebut this presumption of ownership, and can it be said that this endorsement on the bonds of one Virgil Warner, for collection, rebuts it?

But it is said the legal title went into Caldwell by this endorsement, and hence plaintiff below had no title to sustain his suit, and that the Court erred in allowing him to offer from his possession, the bonds, as evidence of *his* ownership. Assuming from the endorsement by Virgil Warner that he once owned the bonds, his endorsement of them to Caldwell "for collection" passed no title to Caldwell.

"Payee of a promissory note may, although he has written an assignment on the back of it, maintain an action thereon in his own name. The possession of the note in such case, is *prima facie* evidence that he is the *bona fide* holder of it, and he may strike out any assignment written upon it by him. Where an

assignment by the payee upon a bill or draft is shown to have been for collection merely, and for no other purpose, it will not transfer the title so as to defeat an action thereon in the name of the payee."

Best vs. *Nokomis R. R.*, 76 Ill. 609.

That Virgil Warner might have stricken out this endorsement for collection whilst he owned these bonds, is the law,—why then might not his transferee, plaintiff below, who was the *presumptive* owner, at the trial?

Had plaintiff in error been *specific* in *objecting* at the trial to the admission of *the endorsements* in evidence, the trial Court could, and doubtless would, have allowed plaintiff there, to have stricken out, "Pay C. A. Caldwell, Esq., cashier, or order, for collection," and filled in the then blank endorsement of Virgil Warner's with his own name, or stricken out the endorsement entire, and sued as bearer.

Parks vs. *Brown*, 16 Ill. 454.

But the record shows that plaintiff in error merely objected generally, and *en masse* to bonds, coupons, endorsements and records.

The pleadings contain no precise issues upon this question of ownership, and will this Court say the Circuit Court so erred in this regard as to reverse its judgment?

Would not the same result have followed had the Circuit Court first permitted an erasure of a portion of this endorsement before proceeding further with the trial, had specific objections been made?

Protection Life Ins. Co. vs. *Foote*, 79 Ill. 361.

Christ vs. *Wray*, 76 Ill. 204.

It is evident from the endorsements themselves that these bonds were once sent to Caldwell *for collection merely*. It is evident also from their being in the possession of defendant in error, at the trial, and sued upon by him, that he had become subsequently the owner. Hence a judgment (which the legal presumption is in favor of, *Burr* vs. *DesMoines*, 1 Wall. 103) in his behalf may be said to have effected substantial justice. And a revisory Court will not reverse for harmless errors where substantial justice has been done.

Hewett vs. *Jones*, 72 Ill. 218.

But, should this court possibly differ from the foregoing views, and look further into the case as presented by the *evidence* contained in the record, I insist the judgment rests upon good law, and substantial justice.

The declaration in this case, consisted merely of the common counts under which these bonds, as part of the evidence, were offered. The Supreme Court of Illinois has decided long since, that it is well settled doctrine that State, county, city and other bonds and public securities of this character, are negotiable by delivery only, without indorsement, in the same manner as bank bills, especially when they are payable to bearer. That if such security when issued, be delivered to plaintiff, *it affords evidence* that he has lent money to the maker, for which it was given, or if he purchased it of any other person, that he paid money for the use of the maker on his debt, for which the law implies a promise to pay him the amount specified in the instrument, when it falls due.

Johnson vs. *Stark County*, 24 Ill. 92.

Ample evidence was offered the trial court from the presumption arising from possession of the bonds, and the county court

orders, to which the bonds refer, and the admission of the county that it had been paying interest for years *on the amount* of the bonds, that plaintiff, or the party from whom he purchased the bonds, had lent money to the county. Also, the bonds further recite they are for *value received.*

The county clerk further certifies, (speaking from the county records) that these very numbered bonds were issued *in pursuance of,* and *by virtue of,* said orders of April 21st and June 8th, 1871. Then it may be fairly inferred and presumed from this evidence, that the county received from plaintiff or some of the parties from whom his purchase came, the amount of money specified in said bonds. That it was obtained to use to extend already existing and matured 10 per cent. county loans, on which the orders recite, the county desired further time, and to cut out and open county roads, which the order recites the revenue for the county for 1870 is insufficient.

That the county received this money on these bonds there can be no doubt, that it used it for the purposes set forth in these orders may be fairly presumed, otherwise, why would it be paying interest on the amount for years? But it is insisted the county had no power to obtain or receive money for these purposes, and therefore, having received it, cannot be held responsible for its return. In other words, it is claimed a county may in good faith, obtain a person's money to use for lawful county purposes, and may then keep it, or the fruits of it, and defy the lender.

The money obtained for five of the bonds was to renew existing matured 10 per cent county notes upon which the county desired further time, viz., those issued under order of April 21.

The Illinois Supreme Court, in 1868, expressed itself to the effect that a city being in debt, which is evidenced by scrip or by

promissory notes, may surely change the form of the indebtedness to interest-bearing bonds, *and this without any express authority in its charter.* It is an *inherent* power and vital, without which such organizations could not live.

Galena vs. *Corwith*, 48 Ill. 425, ~~chap. 424~~.

Subsequently the Court held a city without any charter provision may issue interest-bearing bonds to discharge liabilities incurred as part of the current expenses.

Barret vs. *East St. Louis*, 89 Ill. 176.

The dissenting opinion of two judges of the Illinois Supreme Court in the case of *Hardin County* vs. *McFarlan*, 82 Ill. 141, shows that part of that Court, at least, regard the doctrine of the foregoing *Galena* vs. *Corwith* case as applicaple to *counties*.

But, say opposing counsel, the case of *Hardin County* vs. *McFarlan*, in 82 Ill., decides that counties, *in the absence of statutory authority*, can not issue interest-bearing obligations. My reply to this is, that if that Court has so decided in 82 Ill., they have held just the reverse in 100 Ill. 383, so that there is no uniformity in their decisions about this power of *counties*.

Had these bonds in question not been surrendered in Court and canceled, it is questionable whether they might not be recovered upon in view of this later decision of the Illinois Supreme Court. Counsel may draw distinction as fine as they please, but the fact is still apparent to the candid mind, that *in substance* the Supreme Court of Illinois, in 100 Ill. 383, have decided that county courts may issue 10 per cent. interest-bearing bonds running ten years, interest payable annually, *without any express statutory authority*. It may be said they were issued in that case as part of the contract, or promised by the Court as part of the *inducement* to bid

for county work, but still the palpable fact remains that they were interest-bearing orders, just what in 82 Ill. it is said, the Court held they could not issue without statutory authority.

It is held in *County of Jackson* vs. *Hall*, 53 Ill. 441, that where a county repudiates its bonds upon the theory it had no power to issue them, they may be surrendered into Court by the holder and a recovery had for money had and received. But it is objected that plaintiff in this case is only the remote transferree of the bonds, and that the county had no authority to take the money, and hence none to refund it.

The suit in *Louisiana* vs. *Wood*, 12 Otto, 297, was instituted by one who purchased the void bonds from the original payee. He was in this respect in same position as plaintiff in the case at bar, and was allowed to recover under the money counts as having paid money for use of the maker. Page 298.

The only distinction attempted to be made between the Louisiana case and this one is, that in the former the city had power to borrow.

The point that is sought to be attached to this distinction is, that when the Louisiana bonds failed for want of power to issue *bonds*, the purchaser of the void bonds could fall back upon this power of the city to borrow, and hold it liable upon the legal assumption or implication that it had borrowed money from plaintiff in that suit, or rather his transferrer.

12 Otto, pp. 297–8–9.

It is as much as conceded that if it were not for this distinction, the Louisiana case would be in point.

We think the decision in 100 Ill. 379, *Jackson County* vs. *Rendleman*, has wiped out this distinction, and made the Hardin county case *inapplicable*.

This decision holds that where a county has conferred upon it by statute power to provide a court house when necessary, and the finances of the county will justify it, it may contract for the payment to be made in 10 per cent. interest-bearing county orders, with the interest payable thereon annually. The only statutory power cited by the Supreme Court as possessed by the county, authorizing it to issue interest-bearing orders, payable in the future with annual interest, are the ones quoted on page 383 of 100 Ill. The Court will observe that *neither* of those provisions of statute *expressly authorize* the county to borrow money nor issue interest-bearing orders.

In this respect the powers relied on fall short of the express power to borrow, as contained in the Louisiana case. In fact, the seeming qualification in one of the provisions quoted, viz., "when the finances of the county permit," would rather appear to be a limitation upon the county contracting an interest-bearing debt than otherwise.

Yet the Supreme Court held that the statutory power to do this thing, without limit as to the manner of doing it, confers the power to thus issue paper payable in the future, bearing interest payable annually.

If, now, we can cite similar provissions of statue, in reference to a county constructing roads, and taking care of outstanding matured, interst-bearing orders or notes, then, certainly, we would at least bring our case within the doctrine of the Louisana decision.

The following provisions of statute were in force in 1871, when these bonds were issued, and when Madison county obtained the $4,000 from plaintiff or his transferrors.

Gross' statutes 1869, page 148, § 14, 18, which contains amongst others, the following:

§ 14. * * * * County courts "shall have jurisdiction in all cases of public roads * * where the law does not prohibit the jurisdiction."

§ 18. "But said court shall have jurisdiction in all cases where the matter or thing brought before the said Court relates to the public concerns of the county collectively, and all county business," * * etc.

Same statutes, page 673, § 59 * * * "and if such labor be not sufficient, the county commissioners shall cause the said roads to be cut out and opened *at the expense of the county*, whenever, in their opinion, the funds of the county will justify such expense"

The foregoing are precisely analogus provisions of statute to those quoted by the Supreme Court, in 100 Illinois, p. 383, and which, the Court there construed, as authorizing Jackson county to issue its 10 per cent. county orders.

Certainly constructing court houses, and roads, are *similar* county matters; one, perhaps, no more important than the other; and the power to build the one is given in almost the identical language contained in the statutory power to construct the other.

If Jackson county has power (as held in 100 Ill., p. 383,) to issue its 10 per cent. interest, bearing orders with interest, payable annually, for the purpose of building a court house under the statutory power quoted by the Court, then, certainly, Madison county had power to borrow money at 10 per cent. or 6 per cent., with which to construct roads for its people to go to and from their court house.

We venture to say no substantial difference can be pointed out between these statutory provisions, on the one hand relating to court houses, and on the other relating to county roads and bridges, which are *part* of county roads.

This being so, the county of Madison certainly ought to be brought within the doctrine of the *Louisiana* vs. *Wood* case, and be held accountable to plaintiff for the money had on the bonds with 6 per cent. interest since it ceased to pay interest on them.

A part of these bonds were given by Madison county for money to pay off overdue 10 per cent. county notes, &c., which the county owed guardians, &c.

It is claimed on the other side that the county had no power to pay these off by issuing other interest bearing paper, and the case of *Hardin County* vs. *McFarlan*, in 83d Illinois, is relied upon as the authority in point.

In the latter case decided by the Illinois Supreme Court, cited above, in 100 Ills., page 382, the Hardin county case is reviewed and commented on, and the Court says, "the language there used is to be taken with reference to the particular case in which it was used," page 383.

Stress is then laid by the Court on the particular facts of that case, viz: That the county of Hardin had taken up an amount of pre-existing debt, *common*, *non-interest bearing* county orders, and issued to the holders thereof in lieu thereof the ten per cent. bonds.

The Court say they there held it was not in the power of the county to pay current expenses by issuing ten per cent. bonds therefor.

The Court can see the distinction between that case and the one at bar. In the one at bar, the county was already owing

guardians and others ten per cent. notes, and they were due, and the County Court, in its order recites that the Court is desirous of having further time, etc.

This constitutes a radical difference between this and the Hardin county case, and the Court say, in 100 Ill. p. 384, "there is no prohibition against counties issuing interest bearing orders," etc.

It will be observed too, that even in the Hardin county case, with the facts radically differing from the case at bar, two of the judges dissent on the ground that the doctrine of the Illinois Supreme Court, as they understood it, was that a county might even pay off a non-interest bearing debt with interest bearing bonds.

To summarize then, in a few words—

The county debts attempted to be paid off, in the Hardin county case, in 82 Ill., were current expenses of the county, in the shape of common county orders, non-interest bearing. In the case at bar, the debts to be paid off were matured, *ten per cent.* interest bearing notes, which the county owed, and on which it desired further time.

Also money borrowed, by an order of the County Court, to construct county roads.

To pay the character of county debts described in the Hardin county case, there were no statutory provisions except the authority to fund debts as provided in the act referred to in the opinion.

In regard to the payment of the character of debts involved in the case at bar, we have quoted above statutory provisions fully as express and authoritative as the ones quoted by the Illinois Supreme Court, in 100 Ill. 383.

The Illinois Supreme Court has not decided what a county *may do* when it owes overdue ten per cent. paper.

We have shown that in 1871, when this money was had by the county, the County Court "had jurisdiction in *all cases* where the matter or thing brought before the said Court relates to the public concerns of the county collectively, *and all county business.*"

Gross' statutes, 1879, page 673, § 59.

This provision, and those quoted relating to roads, are fully as strong and authoratative as those quoted in 100 Ill. 383, which were held sufficient to authorize Jackson county to issue 10 per cent. paper.

Certainly then, in view of these statutory provisions, and this decision in 100 Ill., Madison county ought to be held liable to plaintiff in this suit for the $4,000 it obtained on these bonds, with 6 per cent. interest since default in December 1876.

Had it not been for part of this money so furnished it, the county would, in all probability, have been subjected to suits and costs on its overdue paper which this money took up, and about the validity of which there has been no question raised, and as to the rest of the money which it obtained on these bonds for road purposes, the county was expressly authorized to construct them at the expense of the county.

Gross' statutes, 1869, page 673, § 59.

We think under the peculiar circumstances of this case, we ought to be remedied in the recovery of our money, on either of two grounds mentioned in *Louisiana* vs. *Wood*, (12 Otto, page 299) viz., on the ground "that the consideration of these bonds has failed," or on the more equitable one, "that the obligation to do justice rests upon all persons, natural or artificial, and if a *county* obtains the money or property of others without authority, *the law, independent of any statute, will compel restitution or compensation.*"

There can be no good reason why the transferree of the payee, should not recover the money from the county, the same as the payee. If the payee lent the county money, and afterwards transferred his bonds to some one else *for the money*, the latter paid money for the use of the county as certainly and clearly as if he had himself advanced it in the first instance, because, had the Court not given negotiable paper, upon which the first taker could at any time realize, he doubtless would not have furnished it. Such a recovery was allowed in *Lousiana* vs. *Wood*, Southern Law Review, Vol. 5, No. 2, 12 Otto, page 294.

The point is also made that according to the Illinois Supreme Court decision, a county cannot be made to pay interest except by special contract, and it is insisted these decisions are binding on this Court.

As well insist the Illinois decisions *in this class of cases* are binding upon this Court in the matter of allowing interest on overdue coupons issued by counties in Illinois under laws of this State, or that the Illinois decisions bind as to the effect of estoppels in county bonds issued under Illinois statutes, neither of which is the case, although this Court has decided numerous cases involving both questions, where the two courts radically differ. This Court has constantly allowed interest on Illinois county coupons *after due*, notwithstanding the absence in both bond and coupons of an express promise to pay interest on interest. These kind of questions belong to the domain of general law, and the decisions of one Court thereon do not obligate the other to follow.

2 Vol. Danl. N. I. pp. 471–2.

Williams vs. *Town of Roberts*, 88 Ill. p. 24.

It is erroneously alleged in plaintiff in error's brief, page 6, that the Circuit Court rendered judgment for plaintiff for the amount of the bonds, *coupons* and *interest on same*. The judgment was only for the $4,000 and 6 per cent. simple interest since the county ceased to pay, according to its own admission, Dec. 6, 1876. A simple calculation from that date to date of judgment will show this.

Counsel for plaintiff in error allege in their brief that the bonds and coupons offered in evidence in this case had at a previous term been held void. This statement is *de hors* the record, and unauthorized, and so far as this Court can take notice, the bonds had never been before any Court before this suit.

The Statute of Limitation is also interposed to this suit. If the money would be regarded as due on open account the 5 years, Illinois statute would apply, and the answer to it is that 5 years did not run from the time the county ceased to recognize the obligation by paying interest on it, December 10, 1876, and bringing of the suit, December 18, 1880.

Even if it had, payment of interest would have removed the bar.

Edwards on Bills and Notes, 2d Ed., 641, (Note 8).
Parsons on Contracts, 5th Ed. Vol. 3, 77, (Note n.)
U. S. Dig. N. S. Vol. X, 488, (l).
U. S. Dig. N. S. Vol. IX, 482, (183).
U. S. Dig. N. S. Vol. VIII, 515, (141).

Finally, it may be reiterated, upon this meritorious branch of the case, that "the obligation to do justice rests upon all persons, natural, or artificial, *and if a county obtains money* or property of

others *without authority*, the law, *independent of any statute*, will compel restitution, or compensation." Doctrine in

Marsh vs. *Fulton County*, 10 Wall. 684.

Reiterated in

Louisiana vs. *Wood*, 12 Otto, 299.

It would be in the highest degree inequitable and unjust to permit the defendant to repudiate the bonds whilst it retains the money obtained upon them.

Pine Grove vs. *Tolcot*, 19 Wall. 679.

Precisely this same doctrine was applied to *quasi* public corporations by the Illinois Supreme Court in *West* vs. *Menard County*, Age. Bd., 82 Ills. 207, and which a portion of that Court also considered applicable to counties, *Hardin County* vs. *McFarlan*, 82 Ill. 142.

But, as we insisted in the outset, and now reiterate, this case cannot be reviewed on its merits by this Court, because the record is insufficient for that purpose. The legal presumption is in favor of the judgment and sustains it, and there is no error, or substantial error, in the Court's ruling on the evidence, hence we respectfully insist that the judgment should be affirmed.

T. C. MATHER,

Attorney for Defendant in Error.

16-626

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1091.

THE COUNTY OF ALEXANDER, PLAINTIFF IN ERROR,

vs.

JOHN F. KIMBALL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 16, 1882.

SUPREME COURT OF THE UNITED STATES.

No. 1091.

THE COUNTY OF ALEXANDER, PLAINTIFF IN ERROR,

vs.

JOHN F. KIMBALL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

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1 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of Illinois, greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court of the United States for the southern district of Illinois, before you, between John F. Kimball, plaintiff, and The County of Alexander, in the State of Illinois, defendant, a manifest error hath happened to the great damage of the said defendants, The County of Alexander, as by its complaint appears: We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United
2 States, together with this writ, so that you may have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Springfield, in said district, this 2d day of October, in the year of our Lord one thousand eight hundred and eighty-two, and of our Independence the one hundred and seventh year.

[SEAL.] J. A. JONES,
Clerk U. S. Cir. Court, South'n Dist. of Ills.

(Indorsed:) Supreme Court of United States. County of Alexander, plaintiff in error, vs. John F. Kimball. Writ of error. Filed October 2d, 1882. J. A. Jones, clerk.

3 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, district judge of said district, and in the absence of the Hon. Thomas Drummond, judge of the seventh judicial circuit, on Thursday, the third day of August, in the June term of said court, in the year of our Lord one thousand eight hundred and eighty-two, and of our Independence the one hundred and seventh year.

J. A. JONES, *Clerk.*

JOHN F. KIMBALL
vs.
COUNTY OF ALEXANDER. } Assumpsit.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

John F. Kimball, a citizen of the State of Massachusetts, plaintiff, puts in his place Messrs. Scholes and Mather, his attorneys, against the county of Alexander, a body corporate and politic, organized and existing
4 under the laws of the State of Illinois, defendant, who puts in its place

Messrs. Green and Gilbert, its attorneys, in a plea of trespass on the case upon promises.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the eighteenth day of May, in the year of our Lord one thousand eight hundred and seventy-eight, came said plaintiff, by his attorneys, and filed in the office of the clerk of the circuit court of said district his præcipe for summons herein, which said summons is in the words and figures following, to wit:

Præcipe for summons.

Circuit court United States of America, southern district of Illinois.

JOHN F. KIMBALL
vs. } In assumpsit. Damages, $1,500.
THE COUNTY OF ALEXANDER.

The clerk will issue summons in the above entitled cause directed to the marshal of said district.

Springfield, May 14, 1878.

SCHOLES & MATHER,
Plaintiff's Attorneys.

(Indorsed:) Filed May 18, 1878. J. A. Jones, clerk.

5 And afterwards, to wit, on said eighteenth day of May, of the year aforesaid, a summons was issued in said entitled cause out of the office of the said circuit clerk, directed and delivered to the marshal of said district to execute; which said summons, together with the return of the marshal thereon, is in the words and figures following, to wit:

Summons.

Circuit court of the United States of America, southern district of Illinois, ss.

The United States of America to the marshal of the southern district of Illinois, greeting:

We command you to summon the County of Alexander, if found in your district, to be and appear before our judges of our circuit court of the United States for the southern district of Illinois, on the first day of the next term thereof, to be held at Springfield, in the district aforesaid, on the first Monday of June next, to answer unto John F. Kimball of a plea of assumpsit, to his damage, as he alleges, of fifteen hundred dollars, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme
6 Court of the United States of America, at Springfield aforesaid, this eighteenth day of May, in the year of our Lord one thousand eight hundred and seventy-eight, and of our Independence the one hundred and second year.

[L. S.] J. A. JONES, *Clerk.*

I duly executed this writ by delivering a true and perfect copy of the same to Thomas W. Holliday, chairman of the board of county commissioners of the county of Alexander and State of Illinois, this the twenty-second day of May, 1878.

E. R. ROE, *U. S. Marshal,*
By PETER SAUP, *Deputy.*

(Indorsed:) Filed June 1, A. D. 1878. J. A. Jones, clerk.

Then afterwards, to wit, on the twenty-fourth day of May, of the year aforesaid, came again said plaintiff, by his attorneys, and filed in the clerk's office of said court his declaration, copy of instruments sued on, and
7 notice to defendant, which said declaration, copy of instrument sued on, and notice to defendant are in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA,
Southern District of Illinois:

In circuit court, June term, A. D. 1878.

John F. Kimball, who is a citizen of the State of Massachusetts, plaintiff, by his attorneys, Scholes and Mather, complains of the County of Alexander, a body corporate and politic, organized and existing under the laws of the State of Illinois and located in said district and a citizen of the State of Illinois, the defendant, of a plea of trespass on the case on promises, for that whereas heretofore, to wit, on the first day of July, A. D. 1872, at, to wit, said district, defendant made, executed, and delivered its thirty-four interest coupons in writing signed by the county judge and county clerk, and in and by each of said coupons it promised to pay to bearer the sum of forty dollars at the National Bank of Commerce, city of New York, at the maturity of said coupons; and plaintiff avers that afterward, to wit, on the first day of January, 1873, at, to wit,
8 New York City, plaintiff became the purchaser, owner, and bearer for value, without notice of any defence of said coupons, whereby said defendant became liable to pay plaintiff the sum of money in said coupons mentioned when the same became due, and being so liable said defendant afterwards, to wit, on said first day of January, A. D. 1873, at, to wit, said district, promised to pay plaintiff said sums of money in said coupons mentioned when due. But plaintiff further avers that although said coupons are long past due and demand for payment thereof has been made of defendant, it has neglected and refused to pay the same or any part thereof, and still neglects and refuses, to the damage of the plaintiff fifteen hundred dollars, wherefore he brings his suit.

By his att'ys, SCHOLES & MATHER.

(Indorsed:) Filed May 24, 1878. J. A. Jones, clerk.

Copy of instrument sued on.

Copy of instrument sued on.

$40.] CITY OF CAIRO, ILLINOIS, *July 1st*, 1872. [40.

The County of Alexander acknowledges itself to owe the sum

9 of forty dollars, payable to the bearer on the first day of July, A. D. 1877, at the National Bank of Commerce, New York, for six months' interest on bond No. 8 for one thousand dollars, issued to the Cairo and Vincennes Railroad Company.

F. BROSS,
County Judge.

JACOB G. LYNCH,
County Clerk.

(Indorsed) Filed May 24, 1878. J. A. Jones, clerk.

Notice to defendant.

The defendant is hereby notified that the thirty-four of the said coupons are of like tenor with the above copy, differing therefrom only in the No. of bonds referred to and the date of their maturity, there being five numbered 14 to 18, both inclusive, and dated July the first, 1872, respectively, and belonging to correspondingly numbered bonds—coupons due July the first, A. D. 1877; also seven others numbered 8 and 14 to 18, both inclusive, and No. 87, dated respectively, January the first, 1872, and belonging to correspondingly numbered bonds, said seven coupons due July the first, A. D. 1877; also twenty others, dated January the
10 first, 1872, numbered 40 to 61, both inclusive, and belonging to correspondingly numbered bonds, said 22 coupons being due on the first day of July, A. D. 1877, and that plaintiff will rely upon said coupons solely in evidence.

SCHOLES & MATHER,
Att'ys for Pl'ff.

(Indorsed:) Filed May 24, 1878. J. A. Jones, clerk.

Afterwards, to wit, on the seventh day of June of the year last aforesaid, came said defendant by its attorneys, and filed in the clerk's office of said court its demurrer to plaintiff's declaration herein, which said demurrer is in the words and figures following, to wit:

Demurrer to declaration.

In the United States circuit court, southern district of Illinois. June term, 1878.

JOHN F. KIMBALL
vs.
COUNTY OF ALEXANDER. } Assumpsit.

And the defendant, by Green and Gilbert, its attorneys, comes
11 and defends, etc., and says that the said declaration and each count thereof, and the matters therein contained, in manner and form as the same are above set forth, are not sufficient in law for the plaintiff to maintain his aforesaid action, and that the defendant is not bound by law to answer the same, and that it is ready to verify; wherefore the defendant prays judgment, and that the plaintiff may be barred from maintaining his aforesaid action, etc.

GREEN & GILBERT,
Attorneys for Defendant.

(Indorsed:) Filed June 7th, 1878. J. A. Jones, clerk.

Now, afterwards, to wit, on the eleventh day of July, in the June term of said court, in the year of our Lord one thousand eight hundred and seventy-nine, the following proceedings were had in said court in said cause and entered of record, to wit:

Order sustaining demurrer & leave to amend declaration.

JOHN F. KIMBALL
v.
COUNTY OF ALEXANDER. } Assumpsit.

12 This day this cause came on to be heard upon defendant's demurrer to plaintiff's declaration herein, and the court having heard argument of counsel and being sufficiently advised sustains said demurrer with leave to plaintiff to file amended declaration.

Then afterwards, to wit, on the twenty-sixth day of July, of the year last aforesaid, came again said plaintiff by his attorneys and filed in the clerk's office of said court his amended declaration, which said amended declaration is in the words and figures following, to wit:

Amended declaration.

UNITED STATES OF AMERICA,
Southern District of Illinois:

In circuit court, June term, A. D. 1879.

John F. Kimball, a citizen of the State of Massachusetts, plaintiff, by Scholer & Mather, his attorneys, complains of the county of Alexander, a body corporate and politic, organized under the laws of the State of Illinois, and a citizen of said southern district, the defendant, for that whereas said defendant, heretofore, to wit, on the first day of January, A.
13 D. 1872, at, to wit, said southern district, made, executed, and delivered to the Cairo and St. Louis Railroad Company its certain one hundred bonds in writing, which bonds were numbered from one to one hundred, both inclusive, and were of the denomination of one thousand dollars each, signed by F. Bross, county judge, Jacob G. Lynch, clerk of the county court, James E. McCrite and S. Marchilouse, associate justices of the county court of said county, and were each attested by the seal of said county, and with the exception of the numbers thereon were each in the words and figures following, to wit:

No. .] UNITED STATES OF AMERICA, [1,000 dollars.

ALEXANDER COUNTY, STATE OF ILLINOIS.

Issued in payment of stock in the Cairo and Saint Louis Railroad Company.

Know all men by these presents that the county of Alexander, in the State of Illinois, acknowledges itself indebted and firmly bound to the

Cairo and Saint Louis Railroad Company in the sum of one thousand dollars, which sum the said county promises to pay to the Cairo and S't Louis Railroad Company, or bearer, at the National Bank of Com-
14 merce, in the city of New York, on the first day of January, 1892, together with interest thereon from the first day of January, 1872, at the rate of eight per cent. per annum, which interest shall be payable semi-annually, on the first day of January and the first day of July in each year, on the presentation and delivery at said National Bank of Commerce, New York, of the coupons of interest hereto attached. This bond is issued under and in pursuance of an order made by the county court of Alexander County, and authorized by a vote of the citizens of said county, and in accordance with the laws of the State of Illinois.

In testimony whereof the said county of Alexander has executed this bond by the county judge and the two associate justices of the county court of said county signing their names hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing thereto the seal of said court on this first day of January, A. D. 1872.

[SEAL.] JACOB G. LYNCH,
Clerk of the Co. Court of Alexander County.
F. BROSS,
County Judge of Alexander County.

15 JAS. E. McCRITE,
S. MARCHILOUSE,
Associate Justices of the Co. Court of Alexander County, Ill.

Plaintiff avers that each of said bonds, when so executed and delivered as aforesaid, had attached thereto semi-annual interest coupons numbered to correspond with the respective bond to which they belonged, and each signed by F. Bross, county judge, and Jacob G. Lynch, county clerk, and with the exception of the bond numbers thereon and the dates of maturity said coupons are in the words and figures following, to wit:

40.] [40.

CITY OF CAIRO, ILLINOIS, *January 1st*, 1872.

The county of Alexander acknowledges itself to owe the sum of forty dollars, payable to the bearer on the first day of , A. D. 18 , at the National Bank of Commerce, New York, for six months' interest on bond No. , for one thousand dollars, issued to the Cairo and S't Louis Railroad Company.

F. BROSS, *County Judge.*

JACOB G. LYNCH,
County Clerk.

Plaintiff avers that said bonds and coupons were issued by said county under and in pursuance of an order of the county court thereof, and
16 authorized by a vote of the citizens of said county prior to July 2, 1870, to wit, on the 24' day of April, A. D. 1866, in accordance with the laws of the State of Illinois, and that in and by each of said bonds and coupons so executed and delivered as aforesaid the defendant

promised to pay the bearer thereof, at maturity, a sum of money in said bond or coupon mentioned. The plaintiff further avers that the defendant did for a number of years after the issuance of said bonds as aforesaid levy and collect taxes upon the assessable and taxable property of said county and did therewith pay a large amount of said coupons belonging to said bonds, and has since the issuance of said bonds retained, and does still remain, the certificates of stock issued by said Cairo and St. Louis Railroad Company in exchange for said bonds. Plaintiff further avers that he did on, to wit, the first day of January, 1875, at, to wit, New York City, become the purchaser of certain of said bonds and coupons before due for value in the usual course of business, and without notice of any defenses thereto, to wit, of numbers 20–29, 40–95, 98–99, and that plaintiff is still the owner and bearer thereof. Plaintiff further avers that the defendant did also on, to wit, the first day of July, 1872, at, to wit,

17 said southern district, make, execute, and deliver to the Cairo and Vincennes Railroad Company its certain other one hundred coupon bonds, in writing, numbered from one to one hundred, both inclusive, of the denomination of one thousand dollars each, and which were exact fac similes of said bonds so issued as aforesaid to the Cairo and St. Louis Railroad Company, except that they were dated the first day of July instead of January, 1872, and were payable to the Cairo and Vincennes Railroad instead of the Cairo and St. Louis Railroad Company; that said last mentioned bonds when executed and delivered as aforesaid had interest coupons attached for the semi-annual interest thereon to become due, and numbered to correspond with the bond to which they respectively belonged; that said last mentioned interest coupons are fac similes of the said coupons so issued as aforesaid to the Cairo and St. Louis Railroad Company, except as to the name of said company mentioned thereon and that they were dated July 1 instead of January 1, A. D. 1872, and in and by each of said last mentioned bonds and coupons defendant promised to pay bearer said sums of money therein respectively mentioned when due. Plaintiff further avers that said last named bonds and coupons

18 were issued in pursuance of an order made by the county court of said county and authorized by a vote of the citizens of said county prior to July 2, 1870, to wit, on the 1st day of July, A. D. 1867, in accordance with the laws of the State of Illinois authorizing said vote. Plaintiff avers that since the issuance of said last-mentioned bonds and coupons said county has levied and collected taxes upon the taxable property of said county, with which it has paid from year to year a large amount of said interest coupons last mentioned. Plaintiff further avers that said county has, since said bonds and coupons issued, retained, and does still retain, certificates of stock in said Cairo and Vincennes Railroad Company, issued to it by said company in exchange for said bonds and coupons last mentioned. Plaintiff further avers that he did on, to wit, the first day of July, A. D. 1875, at, to wit, New York City, become the purchaser, owner, and bearer of certain of said last-mentioned bonds and their accompanying interest coupons, to wit, of numbers 8, 10, 14–18, 33, 34, 39–50, 66–95, for value, before due, in the usual course of business, without notice of any defenses, whereby plaintiff avers defendant

19 became liable to pay plaintiff said sums of money in said bonds and coupons as mentioned, when due, and being so liable, defendant

did thereafter, to wit, on the first day of July, 1875, at, to wit, said district, promised plaintiff to pay him said sums of money in said bonds and coupons mentioned, when due. Plaintiff further avers that part of said coupons hereinbefore mentioned belonging to said Cairo and St. Louis and Cairo and Vincennes bonds so owned by plaintiff as aforesaid, to wit, Nos. 8, 20 to 29, and 40 to 61 and 87 to 89, due January 1, 1877, and Nos. 40 to 61 and No. 87, due July 1, A. D. 1877, and numbers 40 to 95, 98 and 99, due January 1, A. D. 1878, and numbers 43 to 44, 68 to 77, 79 to 95, due July 1, A. D. 1878, and numbers 40 to 61, 87 to 89, due January 1, A. D. 1879, of bonds of the Cairo and St. Louis Railroad Company, and coupon' Nos. 19, 20, and 22 to 24, 39 to 42, 50, 66 to 70, and 82 to 85, due January 1, A. D. 1877, and Nos. 8, 14 to 18, 19 to 20, & 22 to 24, 39 to 50, and 66 to 95, due July 1, A. D. 1877, and Nos. 8, & 19 to 22, to 24, 33 to 34, 39 to 50, and 66 to 95, due January 1, 1878, and Nos. 8, & 19 to 20, & 22 to 24, 41 to 50, 66 to 77, to 95, due July 1, A. D. 1878, and Nos. 19 to 20, & 22 to 24, 43 to 50, and 66 to 95, due January 1, A. D. 1879, and Nos. 43 to 50, 66 to 77, 81 and 82, and 19, 20, 21, 22, 23, 83 to 88, due July 1,
20 A. D. 1879, of bonds to the Cairo and Vincennes Railroad Company were long past due and unpaid before the bringing of this suit, and, notwithstanding demand made upon defendant therefor, defendant has neglected and refused and still neglects and refuses payment; and whereas, also, the defendant on, to wit, the first day of July, A. D. 1879, at, to wit, said district, was and still is indebted to plaintiff in the sum of twenty-five thousand dollars, for money before that time paid, laid out, and expended by plaintiff for the use of defendant at its request; and in the sum of twenty-five thousand dollars, for money before then lent and accommodated by plaintiff to defendant at its request; and in the sum of twenty-five thousand dollars for money before then had and received by defendant to use of plaintiff; and in the sum of twenty-five thousand dollars before then due from defendant to plaintiff for interest upon divers large sums of money before then due from defendant to plaintiff, and by plaintiff foreborne to defendant for long spaces of time before then elapsed, at the request of defendant, whereby defendant became liable to pay plaintiff said several sums of money when requested. And defendant afterwards on, to wit, the first day of July, A. D. 1879, at, to wit,
21 said district, in consideration of the premises, promised to pay said sums of money to plaintiff on request; and defendant has not, though often requested, paid said sums of money, nor any part thereof, to damage of plaintiff twenty-five thousand dollars, wherefore he brings suit.

By SCHOLES & MATHER, *Att'ys.*

(Indorsed:) Filed July 26, 1879. J. A. Jones, clerk.

Notice to defendant.

Notice to defendant.

For copy of coupons sued on see special count. Coupons sued on being fac similes of each other except dates, bond numbers thereon, and dates of maturity, for which see also special count.

For copy of bond to Cairo & St. Louis Railroad see special count and Exhibit A, herewith filed, the bond to Cairo and Vincennes Railroad being the same as Exhibit A, except date, date of maturity, and name of railroad.

(Indorsed:) Filed July 26, 1879. J. A. Jones, clerk.

22 COPY OF ACCOUNT SUED ON.

The County of Alexander to John F. Kimball, Dr.

To money paid, laid out, and expended		$25,000
" "	lent and accommodated	$25,000
" "	had and received	$25,000
" "	due for interest	$25,000

(Indorsed:) Filed July 26, 1879. J. A. Jones, clerk.

Afterwards, to wit, on the 11th day of August, of the year last aforesaid, came again said defendant, by its attorneys, and filed in the clerk's office of said court its demurrer to amended declaration, which demurrer is in the words and figures following, to wit:

Demurrer to amended declaration.

UNITED STATES OF AMERICA,
Southern District of Illinois:

In the U. S. circuit court.

COUNTY OF ALEXANDER
ats.
JOHN F. KIMBALL. } Demurrer.

23 And the defendant, by Green and Gilbert, its attorneys, comes and defends the wrong and injury, when, etc., and says that the said declaration, and each and every count thereof, and the matters therein contained in manner and form as the same are therein stated and set forth, are not sufficient in law for the plaintiff to have or maintain his aforesaid action thereof against the defendant, and the defendant is not bound by law to answer the same, and this it is ready to verify.

Wherefore it prays judgment, etc.

GREEN & GILBERT,
Att'ys for D'f't.

(Indorsed:) Filed August 11, 1879. J. A. Jones, cl'k.

Then, afterwards, to wit, on the fifteenth day of December, in the June term of said court, in the year of our Lord one thousand eight hundred and eighty, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Order overruling demurrer to declaration.

JOHN F. KIMBALL
v.
COUNTY OF ALEXANDER. } Assumpsit.

And now, on this 15th day of December, 1880, come the parties,
24 by their counsel, and submit to the court the defendant's demurrer to the plaintiff's declaration, and the court having heard and considered the same, doth order and adjudge that said demurrer be overruled and that the defendant plead to the declaration by the 15th day of January next.

Now afterwards, to wit, on the fourteenth day of January, in the year of our Lord one thousand eight hundred and eighty-one, came again said defendant, by its attorneys, and filed in the clerk's office of said court, its pleas herein, which said pleas are in the words and figures following, to wit:

Pleas.

In the U. S. circuit court, southern district of Illinois.

JOHN F. KIMBALL
vs.
COUNTY OF ALEXANDER. } No. 5256. Assumpsit.

1. And the said defendant, by Green & Gilbert, its attorneys,
25 comes & defends, &c., and as to the said supposed coupons in said first count mentioned, and alleged to have been issued to the Cairo and St. Louis Railroad Company, says actio non, because it says that said coupons were not "issued by said county under and in pursuance of an order of the county court thereof, and authorized by a vote of the citizens of said county prior to July 2, 1870, in accordance with the laws of the State of Illinois," in manner and form as in said first count alleged, and of this the defendant puts itself upon the country, wherefore, &c.

GREEN & GILBERT,
Atty's for D'f't.

And pl'ff doth the like.

By its att'ys, SCHOLER & MATHER.

2. And for a further plea in this behalf, as to the said supposed coupons in said first count mentioned, and alleged to have been issued to the Cairo and Vincennes Railroad Company, defendant says actio non, because defendant says that said coupons in this plea referred to were not issued "in pursurance of an order made by the county court of said county, and authorized by a vote of the citizens of said county prior to July 2,
26 1870, in accordance with the laws of the State of Illinois," authorizing said vote, in manner and form as in said first count alleged, and of this the defendant puts itself upon the country, wherefore, &c.

GREEN & GILBERT,
Att'ys for D'f't.

And pl'ff doth the like.

By its att'ys SCHOLES & MATHER.

3. And for a further plea in this behalf as to the said coupons in said first count mentioned, and alleged to have been issued to the Cairo and St. Louis Railroad Company, defendant says, actio non; because it says that defendant did not "for a number of years after the issuance of said coupons levy and collect taxes upon the assessable and taxable property of said county," and did not "therewith pay a large amount of said coupons belonging to said bonds," and has not "since the issuance of said bonds retained," and does not "still retain the certificates of stock issued by said Cairo and St. Louis Railroad Company in exchange for said bonds" in manner and form as in said first count alleged, and of this the defendant puts itself
27 upon the country, wherefore, &c.

GREEN & GILBERT,
Att'ys for D'f't.

4. And for a further plea in this behalf as to the said supposed coupons in said first count mentioned, and alleged to have been issued to said Cairo and Vincennes Railroad Company, defendant says, actio non; because it says that it is not true, as in said first count alleged, that "said county has since said bonds and coupons issued retained and does still retain certificates of stock in said Cairo and Vincennes Railroad Company issued to it by said company in exchange for said bonds and coupons last mentioned," and of this defendant puts itself upon the country, wherefore, &c.

GREEN & GILBERT,
Att'ys for D'f't.

5. And for a further plea in this behalf as to said first count defendant says actio, non; because it says that said coupons were made payable out of the State of Illinois, to wit: "at the National Bank of Commerce, New York," without warrant or authority of law, and were and are under
28 the laws of the State of Illinois only payable upon their presentation for payment, when due, at the county treasury of defendant, where defendant's funds were and are alone authorized by law to be kept; and defendant denies that said coupons were ever presented for payment at said treasury prior to the commencement of plaintiff's said action, and of this defendant puts itself upon the country, wherefore, &c.

GREEN & GILBERT,
Att'ys for D'f't.

6. And for a further plea in this behalf as to said second count in said declaration, defendant says, actio non; because it says that the causes of action in said second count maintained are one and the same as those mentioned in said first count, to wit, the said coupons in said first count mentioned, and defendant denies that said coupons were issued by said county under and in pursuance of an order of the county court of said county and authorized by a vote of the citizens of said county, prior to July 2, 1870, in accordance with the laws of the State of Illinois, as alleged in
29 said first count; and defendant also denies that said county ever, after the issuance of said bonds and coupons, or at any time levied and collected taxes wherewith to pay, or that it ever did pay interest upon said bonds or any of said coupons thereto attached, or that it ever retained or now retains any certificates of stock of said railroad company, or

either of them, issued in exchange for said bonds as charged in said first count, and of this defendant puts itself upon the country, wherefore, &c.

GREEN & GILBERT,
Att'ys for D'f't.

And pl'ff doth the like.

By his att'ys, SCHOLES & MATHER.

7. And for a further plea in this behalf as to said second count, defend- says, actio non; because it says that the causes of action therein and in said first count mentioned are one and the same, to wit, the said coupons in said first count mentioned, and defendant avers that said coupons were made payable at the National Bank of Commerce, New York, and without the State of Illinois, in violation of law, and were and are under
30 the law only payable and authorized to be made payable at the treasury of said county, upon presentation there for payment when due; and defendant denies that said coupons were ever presented for payment at said treasury prior to the commencement of this action, and of this defendant puts itself upon the country, wherefore, &c.

GREEN & GILBERT,
Att'ys for D'f't.

8. And for a further plea in this behalf as to said first count of said declaration defendant says, actio non; because it says that the said bonds and coupons in said first count mentioned were never authorized under existing laws by a vote of the people of the said county of Alexander prior to the adoption of the present constitution of the State of Illinois, and of this defendant puts itself upon the country, wherefore, &c.

GREEN & GILBERT,
Att'ys for D'f't.

And plaintiff doth the like.

By his att'ys, SCHOLES & MATHER.

31 9. And for a further plea in this behalf as to said second count of said declaration defendant says, actio non; because it says that the said causes of action therein and in said first count mentioned are one and the same, to wit, the said coupons in said first count mentioned, and defendant denies that the said bonds and coupons in said first count mentioned were ever authorized under existing laws by a vote of the people of the said county of Alexander prior to the adoption of the present constitution of the State of Illinois, and of this defendant puts itself upon the country, wherefore, &c.

GREEN & GILBERT,
Att'ys for D'f't.

And plaintiff doth the like.

By his att'ys, SCHOLES & MATHER.

(Indorsed:) Filed January 14th, 1881. J. A. Jones, clerk.

Afterwards, to wit, on the first day of February of the year last aforesaid, came again said plaintiff, by his attorneys, and filed in the clerk's

office of said court his demurrer to defendant's 3rd, 4th, 5th, &
32 7th pleas, which said demurrer is in the words and figures following, to wit:

Demurrer to defendant's 3rd, 4th, 5th, & 7th pleas.

UNITED STATES OF AMERICA,
Southern District of Illinois:

In circuit court, June term, A. D. 1881.

JOHN F. KIMBALL
vs.
THE COUNTY OF ALEXANDER. } In assumpsit.

And the plaintiff says that the said pleas by the defendant herein pleaded thirdly, fourthly, fifthly, and seventhly, in manner and form as pleaded, and the matters and things therein contained and set forth, are not sufficient in law to bar the plaintiff of his aforesaid action against him, and that he is not bound by law to answer the same, and this he is ready to verify; wherefore he prays judgment, etc., as aforesaid, etc.

By SCHOLES & MATHER,
His Att'ys.

(Indorsed:) Filed February 1, 1881. J. A. Jones, clerk.

Then, afterwards, to wit, on the tenth day of September, in the
33 June term of said court, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order sustaining demurrer to 3rd, 4th, 5th, & 7th pleas.

JOHN F. KIMBALL
v.
COUNTY OF ALEXANDER. } Assumpsit.

This day this cause came on to be heard upon plaintiff's demurrer to defendant's third, fourth, fifth, and seventh pleas herein pleaded, and the court having heard argument of counsel thereon sustains said demurrer.

Afterwards, to wit, on the twelfth day of September, in the year last aforesaid, came again said defendant, by its attorneys, and filed in the clerk's office of said court its plea of general issue sworn to, which said plea is in the words and figures following, to wit:

Plea of general issue sworn to.

UNITED STATES OF AMERICA,
Southern District of Illinois:

In the U. S. circuit court of the June term, 1881.

34 JOHN F. KIMBALL
vs.
THE COUNTY OF ALEXANDER. } Assumpsit. No. 5392.

And the defendant, by Green and Gilbert, its attorneys, comes and de-

fends the wrong and injury, when, &c., and says that it did not undertake and promise in manner and form as the plaintiff has in his declaration thereof complained against it, and of this said defendant puts itself upon the country, &c.

GREEN & GILBERT,
Att'ys for D'f't.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

Thomas W. Halliday, chairman of the board of county commissioners of said county, being sworn, upon his oath deposes and says that the above plea by said defendant above pleaded is true.

THOS. W. HALLIDAY.

Subscribed and sworn to before me this 1st day of September, A. D. 1881.

WM. B. GILBERT,
U. S. Com'r S. Dist. Ills.

(Indorsed:) Filed September 12, 1881. J. A. Jones, clerk.

35 Then afterwards, to wit, on the third day of August, in the June term of said court, in the year of our Lord one thousand eight hundred and eighty-two, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Judgment.

JOHN F. KIMBALL
v.
COUNTY OF ALEXANDER. } Assumpsit.

This day comes as well the plaintiff, by Messrs. Scholes and Mather, his attorneys, as the defendant, by Messrs. Green and Gilbert, its attorneys, and the issue joined by consent is tried by the court, a jury being waived; and the court having heard the evidence and argument of counsel finds the issue for the plaintiff and assesses his damages to the sum of seventeen thousand seven hundred and ninety-four dollars and sixty-four cents.

It is therefore ordered and adjudged by the court that the plaintiff recover of the defendant the said sum of seventeen thousand seven hundred and ninety-four dollars and sixty-four cents, his damages aforesaid assessed, together with the sum of one hundred and thirty-
36 three dollars and twenty-three cents, his costs and charges by him about his suit in this behalf expended, and that execution issue therefor.

Now, afterwards, to wit, on the second day of October of the year last aforesaid, came again said defendant, by its attorneys, and filed in the clerk's office of said court its bond on writ of error to the Supreme Court of the United States, which said bond is in the words and figures following, to wit:

Bond.

In the circuit court of the United States in and for the southern district of Illinois.

JOHN F. KIMBALL
vs.
THE COUNTY OF ALEXANDER. } Assumpsit.

Know all men by these presents that we, The County of Alexander, as principal, and Wm. P. Halliday, as surety, are held and firmly bound unto John F. Kimball in the sum of five hundred dollars, to be paid to
37 the said John F. Kimball, his executors, or administrators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, successors, executors, and administrators, firmly by these presents.

In witness whereof the said The County of Alexander has caused these presents to be signed by the chairman of its board of county commissioners and attested by its county clerk, and its corporate seal to be hereunto affixed, and the said surety hath hereunto set his hand and seal this second day of October, A. D. 1882.

Whereas the above named The County of Alexander hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States in and for the southern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above named The County of Alexander shall prosecute its said writ of error to effect, and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THOS. W. HALLIDAY,
38 *Chairman of County Board of Alexander County, Illinois.*
[L. S.] SAM'L J. HUMM,
County Clerk of Alexander County, Illinois.
WM. P. HALLIDAY. [SEAL.]

(Indorsed:) Approved.

S. H. TREAT,
District Judge.

(Also indorsed:) Filed October 2, 1882. J. A. Jones, clerk.

Afterwards, to wit, on the seventh day of October of the year last aforesaid, came again said defendant, by its attorneys, and filed in the clerk's office of said court its bill of exceptions herein; which said bill of exceptions are in the words and figures following, to wit:

Bill of exceptions.

In the circuit court of the United States, southern district of Illinois.

JOHN F. KIMBALL
vs.
THE COUNTY OF ALEXANDER. } Assumpsit.

Be it remembered that upon the trial of this cause before the

39 Hon. S. H. Treat, sitting as a circuit judge, a jury being waived by both parties, the plaintiff, to sustain the issues on his part, offered as evidence in this cause certain alleged coupons and bonds, in connection with a certain transcript of the records of the county court of Alexander County, and a certain certificate of the auditor and the charter and amended charter of the Cairo and Vincennes Railroad Company; which said coupons, bonds, transcript of record, auditor's certificate, and charter and amended charter are as follows, to wit: First, three hundred and sixty-four alleged coupons, fac similes of each other, except as to date of maturity and numbers of bond therein written, amounting in the aggregate to the sum of fourteen thousand five hundred and sixty dollars, the numbers of bonds therein written corresponding with the numbers written in the bonds hereinafter referred to, and the dates of maturity thereof being January 1st and July 1st, 1876, and years following up to and including January 1, 1882, one of which coupons is in the words and figures following, to wit:

40 *Coupon.*

40.] CITY OF CAIRO, *July 1st*, 1872. [40.

The County of Alexander acknowledges itself to owe the sum of forty dollars, payable to the bearer on the first day of January, A. D. 1877, at the National Bank of Commerce, New York, for six months' interest on bond No. 39, for one thousand dollars, issued to the Cairo and Vincennes Railroad Company.

F. BROSS,
County Judge.

JACOB G. LYNCH,
County Clerk.

(Written on face in red ink:) 9.

Second. Certain alleged bonds, corresponding in numbers with the numbers written in said coupons, all fac similes of each other, except as to numbers, one of which is in the words and figures following, to wit:

Bond.

43.] Alexander County bond. [1,000 dollars.

STATE OF ILLINOIS.

Issued in payment of stock in the Cairo and Vincennes Railroad Company.

Know all men by these presents that the County of Alexander, in the State of Illinois, acknowledges itself indebted and firmly bound to
41 the Cairo and Vincennes Railroad Company in the sum of one thousand dollars, which sum the said county promises to pay to the said Cairo and Vincennes Railroad Company, or bearer, at the National Bank of Commerce, in the city of New York, on the first day of July, 1892, together with interest thereon from the first day of July, 1872, at the rate of eight per cent. per annum, which interest shall be payable semi-annu-

ally, on the first day of January and July of each year, on the presentation and delivery at said National Bank of Commerce, New York, of the coupons of interest hereto attached. This bond is issued under and in pursuance of an order made by the county court of Alexander County, and authorized by a vote of the citizens of said county and in accordance with the laws of the State of Illinois.

In testimony whereof the said County of Alexander has executed this bond by the county judge and the two associate justices of the county court of said county signing their names hereto, and by the clerk of said
42 court under the order thereof attesting the same and affixing thereto the seal of said court, on this first day of July, A. D. 1872.

[CO. SEAL.] JACOB G. LYNCH,
Clerk of Co. Court of Alexander County, Ills.
F. BROSS,
County Judge of Alexander County, Ills.
JAMES E. McCRITE,
SEVERE MARCHEDON,
Associate Justices of the Co. Court of Alexander Co., Ills.

To which bonds there was still attached 21 coupons similar to copy above given, except numbers and dates of maturity, the last due July 1, 1882, and the first due July 1st, 1892.

Third. Transcript of record of the county court of Alexander County, in the words and figures following, to wit:

43 *Record of Alexander Co. court.*

STATE OF ILLINOIS,
Alexander County, ss:

County court, sitting for the transaction of county business, began and held at the court-house in the city of Cairo, in said county, on Monday, the 3d day of June, A. D. 1867.

Present, Alexander C. Hodges, judge; James E. McCrite, associate; John Howley, do.; Joel G. Morgan, sheriff; Jacob G. Lynch, clerk.

Court opened by proclamation.

Be it remembered that afterwards, to wit, on Tuesday, the 4th day of June, 1867, of the June term, 1867, of said court, the following proceedings were had in the following styled cases, to wit:

IN THE MATTER OF THE)
CAIRO AND VINCENNES RAILROAD COMPANY.)

Whereas a number of the prominent citizens of Alexander County are desirous that said county should subscribe one hundred thousand dollars to the capital stock of the Cairo and Vincennes Railroad Company,
44 it is considered and ordered by the court that an election be held on the 16th day of July, A. D. 1867, for the purpose of determining the wish of the voters of said county whether or not the county of Alexander should subscribe to the capital stock of the said Cairo and Vincennes Railroad Company the sum of one hundred thousand dollars in bonds of said county, running twenty years from the dates thereof, with interest on

said bonds at the rate of eight per cent. per annum; and it is ordered that the clerk of this court give notice accordingly, said notice to contain all facts required by the statute in such case made and provided.

And afterwards, to wit, on Monday, the 25th day of November, A. D. 1867, of the regular November term, 1867, of said Alexander County county court, Hon. Alexander C. Hodges, judge, James E. McCrite and John Howley, associates, being present, the following further proceedings were had in the matter of the "Cairo and Vincennes Railroad."

Whereas the county court of this county is desirous that the work on the Cairo and Vincennes Railroad should be pushed to an early completion, and whereas it is to the interest of the people of Alexan-
45 der County that this court should enter into and ratify the contract with the Cairo & Vincennes Railroad Company hereinafter mentioned, it is considered and—

Ordered, that the county court of this county agree to and enter into the following contract with said company, to be attested by the county clerk of this county, with the county seal attached, viz:

This contract, made and entered into by and between Alexander C. Hodges, judge, and James E. McCrite and John Howley, associate justices of the county court of Alexander County, Illinois, who act for and on behalf of Alexander County, parties of the first part, and the Cairo and Vincennes Railroad Company, party of the second part, witnesseth:

That whereas heretofore, to wit, on the 16th day of July, A. D. 1867, by a vote of the electors of Alexander County, Illinois, at an election held in said county, the county court was authorized to make a subscription of one hundred thousand dollars to the capital stock of said Cairo and Vincennes Railroad Company, and to pay for said stock in bonds of Alexander County of the denomination of five hundred dollars each,
46 the bonds to run for twenty years, and to bear interest at the rate of eight per centum per annum, payable half-yearly on the first day of January and July of each year in the city of New York; said Alexander County being required by the laws of this State to issue installments of said bonds from time to time as assessments may be made upon said stock by said railroad company; and whereas said railroad company proposes to guaranty that work on said railroad shall be commenced at Cairo within six months from the date of this contract, and that the construction of the road-bed and laying the track from Cairo northward shall be pushed with reasonable dispatch, and also to release the county of Alexander from the obligation to issue any part of said bonds until the said railroad shall be built from Cairo to the boundary line between Alexander and Pulaski Counties, and also to purchase of Alexander County the stock of said company to be issued to said county upon the delivery of the county bonds aforesaid:

It is therefore hereby stipulated and agreed by and between the parties aforesaid as follows:

47 ARTICLE FIRST.—The parties of the second part agrees that work on said railroad shall be commenced at Cairo within six months from the date of this contract, and that the construction of the road-bed and laying the track from Cairo northward shall be pushed with reasonable dispatch.

ARTICLE SECOND.—The parties of the second part agrees that, instead

of the county of Alexander issuing bonds in payment for stock upon assessments made from time to time by said railroad company, the county of Alexander shall issue fifty thousand dollars of bonds and deliver the same to said company in payment for stock when the track of said railroad shall have been laid to the county line between Alexander and Pulaski Counties, and cars have run thereon; and said county shall issue other fifty thousand dollars of bonds as aforesaid and deliver the same to said company, in payment for stock, when the track of said railroad shall have been laid and cars shall have run thereon from the city of Cairo to the farther line of Pulaski County.

ARTICLE THIRD.—The party of the first part hereby agrees to issue fifty thousand dollars of bonds of Alexander County, in payment
48 for fifty thousand dollars of stock of the Cairo and Vincennes Railroad Company, and deliver said bonds to said company whenever the railroad track of said company shall be laid from the city of Cairo to the boundary line between the counties of Alexander and Pulaski and cars shall have run thereon, and also to issue fifty thousand dollars of said bonds in payment of stock aforesaid, and deliver the same to the said company whenever the railroad track of said company shall have been laid from the city of Cairo to the boundary line between the counties of Pulaski and Johnson, and cars shall have run thereon.

ARTICLE FOURTH.—And whereas the early construction of said railroad is of vast importance to said county, therefore, in consideration of the stipulations made by the party of the second part in article first and second of this contract, and in consideration of the sum of five thousand dollars to be paid by the said party of the second part as hereinafter stated, the parties of the first part hereby agree to sell and transfer to the said party of the second part the one hundred thousand dollars stock of said
49 railroad company, to be issued to Alexander County, Illinois, in payment of the one hundred thousand dollars county bonds, at and for the sum of five thousand dollars, as follows:

When fifty thousand dollars of the stock of said company shall be issued to Alexander County the parties of the first part agree to transfer and assign the same to the party of the second part on payment of twenty-five hundred dollars in Alexander County bonds, and when other fifty thousand dollars of stock of said company shall be issued as aforesaid the parties of the first part agrees to transfer and assign the same to the party of the second part on payment of twenty-five hundred dollars of Alexander County bonds.

This contract is executed in duplicate and made and signed by the parties of the first part in open court at the city of Cairo, Alexander County, Illinois, and made a matter of record in said court. The whole done and executed this 25th day of November, A. D. 1867.

Witness our hands and seals.

ALEXANDER C. HODGES, [SEAL.]
County Judge Alexander County.
JOHN HOWLEY, [SEAL.]
Associate Justice Alexander County.
50 JAMES E. McCRITE, [SEAL.]
Associate Justice Alexander County.
GREEN B. RAUM, [SEAL.]
President Cairo and Vincennes Railroad Co.

Attest with the county seal attached this Nov. 25th, A. D. 1867.

JACOB G. LYNCH,

Clerk of the County Court of Alexander County, Ill's.

And afterwards, to wit, on Wednesday the 20th day of May, A. D. 1868, at a special term of the said Alexander County county court, with Hon. Alex. C. Hodges, judge, John Howley and James E. McCrite, associates, present, the following further proceedings were had in the matter of the Cairo and Vincennes Railroad:

Whereas by the conditions of the contract made and entered into by and between this court and the Cairo and Vincennes Railroad Company for the construction of the Cairo and Vincennes Railroad in this county said company are required to begin the work on said road at the city of Cairo within six months from the 25th day of November, A. D. 1867; and whereas it has been made apparent to the court that owing to the
51 high water in and around the city of Cairo it will be impossible for said company to comply with said contract in the above mentioned particular, therefore it is considered and ordered by the court that the time for the commencement of the work at the city of Cairo on said road by said company be, and is hereby, extended for the term of thirty days from the 25th day of May, A. D. 1868; and it is further ordered that a compliance with this order by said company shall not operate to viciate said contract.

And afterwards, to wit, on Saturday, the 16th day of July, 1870, of the regular July term of the said Alexander County county court, Hon. F. Bross, judge, James E. McCrite and Severe Marchildon being present, the following further proceedings were had in the matter of the Cairo and Vincennes Railroad:

Application having been made by S. S. Taylor, on behalf of the Cairo and Vincennes Railroad Company, for an extension of time to complete said road, it is—

Ordered, that the time for the completion of said road according to contract be extended to December the 1st, 1872; provided, that said company shall commence the building of said road on or before the first day
52 of December next, and shall diligently prosecute said work until said road is completed. It is further—

Ordered, that the clerk of this court hand to the proper representative of said company a certified copy of this order.

And afterwards, to wit, on Monday, the 5th day of December, A. D. 1870, of the regular December term, 1870, of the said Alexander County county court, the Hon. F. Bross, judge, and James E. McCrite and Severe Marchildon being present, the following further proceedings were had in the matter of the Cairo and Vincennes Railroad:

Whereas on the 16th day of July, 1867, the voters of Alexander County voted one hundred thousand dollars to the capital stock of the Cairo and Vincennes Railroad Company, in pursuance of an order of the county court of Alexander County made at the June term, 1867; and

Whereas on the 25th day of November, 1867, the county court of Alexander County and Green B. Raum, as president of the Cairo and Vincennes Railroad Company, entered into a contract whereby said county court, for and in behalf of said county, agreed to issue one

53 hundred thousand dollars in county bonds, payable twenty years after the date of such bonds, with interest at the rate of eight per cent. per annum, payable semi-annually to said railroad company in installments, as stipulated in said contract. In consideration of said bonds as aforesaid, the said railroad company agreed in said contract to issue to said Alexander County one hundred thousand dollars stock in said Cairo and Vincennes Railroad.

And whereas the said county court of said county agreed in the same contract with the said railroad company to sell said one hundred thousand dollars stock in said railroad when issued back to said railroad company, in and for the consideration of five thousand dollars in county bonds of Alexander County, thereby virtually giving and donating to said railroad company ninety-five thousand dollars in Alexander County bonds, with eight per cent. interest per annum on said bonds for twenty years, said interest amounting to one hundred and fifty-two thousand dollars, and the interest and principal to the amount of two hundred and forty-seven thousand dollars; and whereas the vote of the people of said county on

54 said subscription to said capital stock of said railroad company, did not authorize the county court to sell said stock at a mere nominal sum, and thereby donating to said railroad company said amount above stated, which action is not warranted by law;

And whereas more than a reasonable length of time has elapsed for the construction and completion of said railroad, and also the extension of time granted on said contract, requiring said railroad company to commence said work within six months from the date of said contract and to finish said work with reasonable dispatch to completion, and extension granted requiring said railroad company to commence work on or before the first day of December, 1870, and with dispatch prosecute said work until completed, and said railroad company has failed to comply with said contract and requirements of said extension; it is therefore

Ordered, that said contract is hereby declared null and void and of no effect, and not considered binding any longer this county to any of its stipulations, and it is further ordered that the clerk of this court notify the representative of said railroad company in this county of this order.

55 And afterwards, to wit, on Saturday, the 11th day of March, A. D. 1871, of the regular March term of the said Alexander County county court, the Hon. F. Bross, judge, James E. McCrite and Severe Marchildon, associates, being present, the following further proceedings were had in the matter of the Cairo and Vincennes Railroad.

The following petition of citizens and electors of Alexander County was presented, viz:

We, the undersigned, citizens and electors of Alexander County, would respectfully petition your honorable body to take immediate action upon the proposition of the Cairo and Vincennes Railroad Company, and issue the bonds of Alexander County, heretofore appropriated by vote and contract to said railroad, and place said bonds in the hands of some competent and responsible person or persons to be held for delivery to said railroad company, when said company shall have purchased and placed under the control of said trustees the iron rails, chairs, and spikes necessary for the construction of said railroad between the city of Cairo and

56 town of Vienna, and to provide that said trustee or trustees shall

retain absolute control of said material until the same is from time to time laid down upon the track of said railroad between Cairo and Vienna.

Your petitioners would respectfully call the attention of the court to the fact that the people of this county are earnestly desirous for the construction of said railroad, and are perfectly willing to donate the bonds heretofore voted to secure the construction of said road, and we believe that the proposition of the company afford reasonable assurances of an early resumption of work, and perfect to the county of Alexander against loss,. And your petitioners will ever pray, &c.

After duly considering the petition of the president and directors of the Cairo and Vincennes Railroad, and the petition of a large number of citizens of Cairo for the county court to issue one hundred thousand dollars in county bonds, running twenty years with eight per cent. interest per annum, to be placed in the hands of a trustee, &.c, we have come to the following conclusion:

That we duly regard the petition of your citizens, and while
57 we regard the importance of said railroad to the city of Cairo, yet we are aware under what influence, and without time for reflection, many of the signers have signed said petition, and being of opinion that the adoption of the plan suggested in said petition would open up a large field for corruption and litigation, and the county itself being the best custodian of the bonds, we ,therefore do hereby refuse to comply with said petition. In regard to the suggestion made by Col. S. Stats Taylor, to place the subscription on its original footing as voted by the citizens of Alexander County, we hereby order that said suggestion be taken in due consideration until the court meets again; that the clerk make copies of all orders, petitions, &c., heretofore made by this court, and deliver them to F. Bross, county judge; and it is further

Ordered, that this court meet again on the first Monday in April next; that we hereby request F. Bross to try to get a meeting of the county judges of the counties through which said road passes to secure some united action in the premises at the most convenient place; it is further ordered that said petition be placed on record with this order.

58 And afterwards, to wit, on Tuesday, the 2d day of May, A. D. 1871, at a special term of said Alexander County county court, with the full bench present, the following further proceedings were had in the matter of the Cairo and Vincennes Railroad:

It is ordered that the clerk of this court notify the directors of said railroad that this court will make a subscription as voted for by the people of this county to the capital stock of the Cairo and Vincennes Railroad in the sum of one hundred thousand dollars in Alexander County bonds payable in twenty years from their date, bearing eight per cent. interest per annum, on the following conditions, to wit:

First. That said railroad company shall commence work on said road within sixty days from this date, and shall prosecute said work to completion with dispatch and without delay and shall complete said railroad from Cairo to Vincennes within two years faom this date.

Second. Whenever said road is completed from Cairo to Mound City and regular trains run on said road, then this court will issue fifty
59 thousand dollars of said bonds to said railroad company on deliv-

ery to the county court of fifty thousand dollars of paid up stock in said railroad.

Third. That whenever said railroad is completed to Johnson County, ten miles north of Mound City, and regular trains running thereon, then this court will issue to said railroad company the other fifty thousand dollars in county bonds, on delivery to said county of fifty thousand dollars of paid up stock in said railroad.

Fourth. Said bonds shall not be valid and binding on said county, unless the whole road from Cairo to Vincennes is completed and in the time specified, and no interest shall become due until this court has ample time to assess the property of the county therefor and collect the same, and order shall be made to that effect by this court, and shall be endorsed on said bond, printed or in writing.

Fifth. Said stock shall be paid up stock and not be liable for any assessments made by the company.

S. Marchildon, associate justice, dissenting and voting against the above.

60 And afterwards, to wit, on Wednesday, the 6th day of March' 1872, of the regular March term of said court, with the Hon. F. Bross, judge, James E. McCrite and Severe Marchildon, associates, present, the following further proceedings were had in the matter of the Cairo and Vincennes Railroad:

Whereas the people of Alexander County, State of Illinois, did on the day of , 1867, by a legal majority authorize the county court of said county to subscribe the sum of one hundred thousand dollars to the capital stock of the Cairo and Vincennes Railroad Company, payable in the bonds of said county:

Now, therefore, we, the county court of said county of Alexander, in the State of Illinois, for and on behalf of the said county, do hereby subscribe for one thousand shares of one hundred dollars each of the capital stock of the Cairo and Vincennes Railroad Company, said subscription to be paid in the bonds of Alexander County at par, bearing interest at the rate of eight per centum per annum, payable semi-annually, and the principal of said bonds payable in the city of New York, twenty years after date. This subscription in no way interferes with or invalidates
61 the contract for sale of said one thousand shares of capital stock, which contract now is existing between said county and said railroad company, and this court hereby recognizes that the said company have commenced and prosecuted the work on the said railroad in accordance with the orders of this court.

And afterwards, to wit, on Monday, the 11th day of March, A. D. 1872, all members of the court being present, the following further proceedings were had in the matter of the Cairo and Vincennes Railroad:

It is ordered that the bonds of one hundred thousand dollars heretofore voted to the Cairo and Vincennes Railroad Company by the legal voters of Alexander County be issued this term, and placed in the hands of a trustee to be delivered to the said Cairo and Vincennes Railroad Company whenever said road is completed and a regular train of cars shall have run thereon, passed over said railroad from Cairo to Vincennes, according to the conditions and stipulations by this court heretofore made at the July adjourned term, A. D. 1871. It is further ordered, that so much of an

order made at the July adjourned of the court, A. D. 1871, in
62 regard to requiring a bond in the sum of two hundred and sixty thousand dollars be, and the same is hereby, rescinded, and that no such bond be required from the committee of citizens.

It is ordered by the court that A. B. Safford, S. Staats Taylor, and Paul G. Schuh, be, and they are hereby, appointed trustees to hold in trust the bonds to be issued to the Cairo and Vincennes Railroad Company, to hold and deliver said bonds to said company, or to return them to the county court of this county, according to the orders heretofore made by this court in the premises; and it is further ordered that a copy of said order be furnished to said trustees. It is understood by and between this court and the trustees hereby appointed that they are to receive no fees or compensation for the services performed by them from this county.

In pursuance of the above order the said A. B. Safford, S. S. Taylor, and Paul G. Schuh came and in open court filed the following acceptance, viz:

We, the above appointed trustees, accept said trusteeship on the conditions prescribed by the court.

S. S. TAYLOR.
PAUL G. SCHUH.
A. B. SAFFORD.

63 Court adjourned until to-morrow morning at 9 o'clock.

TUESDAY MORNING, *March 12th*, 1872.

Court met pursuant to adjournment. All officers present.

Whe' the following further proceedings were had in the matter of the Cairo and Vincennes Railroad.

Be it remembered that on this day one hundred of the county bonds, of one thousand dollars each, drawing eight per cent. interest, payable 20 years from date, July 1st, 1872, at the city of New York, were this day issued to the Cairo and Vincennes Railroad Company, signed, sealed, and delivered to A. B. Safford, S. S. Taylor, and Paul G. Schuh, trustees, appointed by the court to hold said bonds until the Cairo and Vincennes Railroad Company is entitled under their contract with the county to receive them.

And afterwards, to wit, on Wednesday, the 5th day of June, A. D 1872, of the regular June term of the said Alexander County county court, all members of the court being present, the following further pro-
64 ceedings were had in the matter of Cairo and Vincennes Railroad:

It is considered and ordered by the court that the following receipt be approved and recorded, viz:

Received of Alexander County one hundred thousand dollars, in Alexander County bonds, issued to the Cairo and Vincennes Railroad Company, together with forty coupons on each bond, for fifty dollars each coupon, to be delivered to said railroad company, according to the conditions set out by the county court of Alexander County, of which orders a copy has been presented to the undersigned trustees, reserving the right to

surrender the said bonds and trust to the said county court if we desire so to do at any time.

Cairo, Ill's, March 12th, 1872.

S. STATTS TAYLOR,
PAUL G. SCHUH,
A. B. SAFFORD,
Trustees.

And afterwards, to wit, on Friday, the 27th day of December, A. D. 1872, of the regular December term, 1872, of said Alexander County county court, with all officers of the court present, the following further proceedings were had in the matter of the Cairo and Vincennes Railroad:

65 It is ordered that the report of the trustees, S. Staats Taylor, A. B. Safford, and Paul G. Schuh, appointed by this court to hold the bonds issued to the Cairo & Vincennes Railroad, and to deliver them according to the orders of this court heretofore made and entered, together with the duplicate receipt of the Cairo and Vincennes Railroad Company, per Edward T. Winslow, attorney in fact, are hereby approved and ordered recorded with the proceedings of this court.

And it is further ordered that the said trustees deliver to the county treasurer the coupons detached from the said bonds, together with the five one thousand dollar bonds, for which the one hundred thousand dollar stock in said railroad has been sold to the said railroad company, and all the coupons on said five bonds, and the county treasurer is hereby required to cancel said bonds and coupons, according to law; and it is further ordered that the county treasurer pay to the Cairo and Vincennes Railroad Company, on the first day of January, A. D. 1873, the sum of three hundred & thirty-seven dollars and seventy-six cents, the amount of interest on ninety-five thousand dollars of said bonds for sixteen days, the 66 coupons of said bonds being all detached, up to the coupons to become due on July 1st, 1873, and the above amount of interest being the interest accumulated from the day of delivery of said bonds to January 1st, 1873, for which amount the county clerk is to issue a county order to the said Cairo and Vincennes Railroad Company for said amount before payment by the treasurer.

CITY NATIONAL BANK,
Cairo, Ills., Dec'r 14th, 1872.

A. B. SAFFORD, Esq., *Trustee, Cairo, Ills.*

D'R SIR: We hereby certify that on the 13th inst., Dec'r, a through train passed over the Cairo & Vincennes Railroad from the city of Vincennes to the end of the track at Cairo. The track was in good running order, and this train was the third which passed through the tunnel that day.

WINSLOW AND WILSON,
Ch'f Contractors.
CHAS. O. WOOD, *Ass't Sup't.*

CAIRO, ILLS., *Dec. 14th*, 1872.

Personally appeared before me E. P. Winslow, of the firm of Winslow

and Wilson, and Chas. O. Wood, who each subscribed and made oath to the foregoing certificate as being true and correct.

H. H. CANDEE,
Notary Public.

67 Received, Cairo, Dec. 14th, 1872, of S. S. Taylor, Paul G. Schuh, and A. B. Safford, trustees, ninety-five Alexander County 8 % bonds, numbered from one to ninety-five, both inclusive, for one thousand dollars each, dated July 1st, 1872, and each bond having thirty-nine coupons attached, the first payable July 1st, 1873, said bonds being in full for subscription to the capital stock of the Cairo and Vincennes Railroad of one hundred thousand dollars, the said county having sold the said stock to the Cairo and Vincennes R'r'd for five thousand dollars, and have this day received five thousand dollars in the bonds of said county from the Cairo and Vincennes R. R. Co.

THE CAIRO & VINCENNES R. R. Co.,
By EDWARD D. WINSLOW,
Att'y in Fact.

To the honorable county court, Alexander Co.:

GENTS: We have this day delivered to the Cairo and Vincennes Railroad Company, in accordance with the trust imposed upon us, ninety-five Alexander County bonds of one thousand dollars each, being the same subscribed by the Alexander County court to the capital stock of said
68 railroad. We detached from them, the said bonds, all coupons maturing January 1st, 1873, which, with five thousand dollars in county bonds, we hold subject to your order. We also hand you duplicate receipt from the R. R. co. for the said bonds. As we detached all the coupons due January 1st, 1873, from said bonds, the county will owe the Cairo and Vincennes Railroad Company sixteen days' interest on same, which amounts to three hundred and thirty-seven $\frac{82}{100}$ dollars. Trusting our action in behalf of this trust may meet your approval, we are your obedient servants,

S. STAATS TAYLOR,
A. B. SAFFORD,
PAUL G. SCHUH,
Trustees.

And afterwards, to wit, on Thursday, the 6th day of March, 1873, of the regular March term of said Alexander County county court, all officers of court being present, the following further proceedings were had in the matter of the Cairo and Vincennes Railroad:

It is considered and ordered by the court that the receipt of William Martin, county treasurer of this county, to A. B. Safford, S. Staats
69 Taylor, and Paul G. Schuh, trustees, to hold the bonds issued by the county of Alexander to the Cairo and Vincennes Railroad Company for five one thousand dollar bonds of said county, numbered from 96 to 100, both inclusive, with forty coupons to each bond attached, and also for 95 coupons of forty dollars each, numbered from 1 to 95 inclusive, be approved and filed. The report of Paul G. Schuh, S. Staats Taylor, and A. B. Safford, trustees, &c., that they had delivered to William Martin, county treasurer of Alexander County, five one thou-

sand dollar bonds, numbered from 96 to 100, both inclusive, and also 95 coupons of $40 each, the bonds being for one hundred thousand dollars capital stock of the Cairo and Vincennes Railroad, &c., &c., being examined by the court, and the court being fully advised in the premises, it is ordered that the said report be approved and filed.

Court adjourned until to-morrow morning at 9 o'clock.

FRIDAY MORNING, *March 7th*, 1873.

70 Court met pursuant to adjournment, all officers present, when the following further proceedings were had in the matter of the Cairo and Vincennes Railroad:

On this day comes William Martin, treasurer of Alexander County, and presents to this court five bonds of the denomination of one thousand dollars each, numbered from 95 to 100, both inclusive, together with all the coupons, forty in number on each bond and numbered from 1 to 40, both inclusive, issued to the Cairo and Vincennes Railroad Company by this court, in consideration of which bonds the stock in the said railroad for one hundred thousand dollars has been transferred to said railroad company by the trustees in whose hands said bonds were placed, according to the original agreement between the county court of this county and said railroad company; therefore it is ordered that said bonds and coupons be canceled (which was done in open court), and that the county treasurer keep them on file in his office.

71 STATE OF ILLINOIS,
Alexander County, ss:

I, Sam'l J. Humm, county clerk in and for the county and State aforesaid, do hereby certify that the foregoing orders of the county court of Alexander County in the matter of the Cairo and Vincennes Railroad are true and correct copies of said orders as they appear now of record in my office.

In testimony whereof I hereunto set my hand and the official seal of said court, at office in the city of Cairo, this 6th day of Oct., A. D. 1881.

[SEAL.] SAM'L J. HUMM.
County Clerk.

72 Fourth. Certificate of auditor in words and figures following, to wit:

Certificate of order.

STATE OF ILLINOIS,
County of Alexander:

CAIRO, *Dec'r 26th*, 1872.

To the auditor of public accounts of the State of Illinois:

SIR: I hereby certify that the following described bonds are entitled to registration in your office under the provisions of the act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869; the bonds being numbered from No. one to No. 95, incl., for $1,000 each, dated Jan'y 1st, 1872, and payable July 1st, 1892, being in all 100 bonds, and amounting to $100,000,

order made at the July adjourned of the court, A. D. 1871, in
62 regard to requiring a bond in the sum of two hundred and sixty thousand dollars be, and the same is hereby, rescinded, and that no such bond be required from the committee of citizens.

It is ordered by the court that A. B. Safford, S. Staats Taylor, and Paul G. Schuh, be, and they are hereby, appointed trustees to hold in trust the bonds to be issued to the Cairo and Vincennes Railroad Company, to hold and deliver said bonds to said company, or to return them to the county court of this county, according to the orders heretofore made by this court in the premises; and it is further ordered that a copy of said order be furnished to said trustees. It is understood by and between this court and the trustees hereby appointed that they are to receive no fees or compensation for the services performed by them from this county.

In pursuance of the above order the said A. B. Safford, S. S. Taylor, and Paul G. Schuh came and in open court filed the following acceptance, viz:

We, the above appointed trustees, accept said trusteeship on the conditions prescribed by the court.

S. S. TAYLOR.
PAUL G. SCHUH.
A. B. SAFFORD.

63 Court adjourned until to-morrow morning at 9 o'clock.

TUESDAY MORNING, *March 12th*, 1872.

Court met pursuant to adjournment. All officers present.

Whe' the following further proceedings were had in the matter of the Cairo and Vincennes Railroad.

Be it remembered that on this day one hundred of the county bonds, of one thousand dollars each, drawing eight per cent. interest, payable 20 years from date, July 1st, 1872, at the city of New York, were this day issued to the Cairo and Vincennes Railroad Company, signed, sealed, and delivered to A. B. Safford, S. S. Taylor, and Paul G. Schuh, trustees, appointed by the court to hold said bonds until the Cairo and Vincennes Railroad Company is entitled under their contract with the county to receive them.

And afterwards, to wit, on Wednesday, the 5th day of June, A. D 1872, of the regular June term of the said Alexander County county court, all members of the court being present, the following further pro-
64 ceedings were had in the matter of Cairo and Vincennes Railroad:

It is considered and ordered by the court that the following receipt be approved and recorded, viz:

Received of Alexander County one hundred thousand dollars, in Alexander County bonds, issued to the Cairo and Vincennes Railroad Company, together with forty coupons on each bond, for fifty dollars each coupon, to be delivered to said railroad company, according to the conditions set out by the county court of Alexander County, of which orders a copy has been presented to the undersigned trustees, reserving the right to

surrender the said bonds and trust to the said county court if we desire so to do at any time.

Cairo, Ill's, March 12th, 1872.

S. STATTS TAYLOR,
PAUL G. SCHUH,
A. B. SAFFORD,
Trustees.

And afterwards, to wit, on Friday, the 27th day of December, A. D. 1872, of the regular December term, 1872, of said Alexander County county court, with all officers of the court present, the following further proceedings were had in the matter of the Cairo and Vincennes Railroad:

65 It is ordered that the report of the trustees, S. Staats Taylor, A. B. Safford, and Paul G. Schuh, appointed by this court to hold the bonds issued to the Cairo & Vincennes Railroad, and to deliver them according to the orders of this court heretofore made and entered, together with the duplicate receipt of the Cairo and Vincennes Railroad Company, per Edward T. Winslow, attorney in fact, are hereby approved and ordered recorded with the proceedings of this court.

And it is further ordered that the said trustees deliver to the county treasurer the coupons detached from the said bonds, together with the five one thousand dollar bonds, for which the one hundred thousand dollar stock in said railroad has been sold to the said railroad company, and all the coupons on said five bonds, and the county treasurer is hereby required to cancel said bonds and coupons, according to law; and it is further ordered that the county treasurer pay to the Cairo and Vincennes Railroad Company, on the first day of January, A. D. 1873, the sum of three hundred & thirty-seven dollars and seventy-six cents, the amount of interest on ninety-five thousand dollars of said bonds for sixteen days, the 66 coupons of said bonds being all detached, up to the coupons to become due on July 1st, 1873, and the above amount of interest being the interest accumulated from the day of delivery of said bonds to January 1st, 1873, for which amount the county clerk is to issue a county order to the said Cairo and Vincennes Railroad Company for said amount before payment by the treasurer.

CITY NATIONAL BANK,
Cairo, Ills., Dec'r 14th, 1872.

A. B. SAFFORD, Esq., *Trustee, Cairo, Ills.*

D'R SIR: We hereby certify that on the 13th inst., Dec'r, a through train passed over the Cairo & Vincennes Railroad from the city of Vincennes to the end of the track at Cairo. The track was in good running order, and this train was the third which passed through the tunnel that day.

WINSLOW AND WILSON,
Ch'f Contractors.
CHAS. O. WOOD, *Ass't Sup't.*

CAIRO, ILLS., *Dec. 14th*, 1872.

Personally appeared before me E. P. Winslow, of the firm of Winslow

and Wilson, and Chas. O. Wood, who each subscribed and made oath to the foregoing certificate as being true and correct.

H. H. CANDEE,
Notary Public.

67 Received, Cairo, Dec. 14th, 1872, of S. S. Taylor, Paul G. Schuh, and A. B. Safford, trustees, ninety-five Alexander County 8 % bonds, numbered from one to ninety-five, both inclusive, for one thousand dollars each, dated July 1st, 1872, and each bond having thirty-nine coupons attached, the first payable July 1st, 1873, said bonds being in full for subscription to the capital stock of the Cairo and Vincennes Railroad of one hundred thousand dollars, the said county having sold the said stock to the Cairo and Vincennes R'r'd for five thousand dollars, and have this day received five thousand dollars in the bonds of said county from the Cairo and Vincennes R. R. Co.

THE CAIRO & VINCENNES R. R. CO.,
By EDWARD D. WINSLOW,
Att'y in Fact.

To the honorable county court, Alexander Co.:

GENTS: We have this day delivered to the Cairo and Vincennes Railroad Company, in accordance with the trust imposed upon us, ninety-five Alexander County bonds of one thousand dollars each, being the same subscribed by the Alexander County court to the capital stock of said
68 railroad. We detached from them, the said bonds, all coupons maturing January 1st, 1873, which, with five thousand dollars in county bonds, we hold subject to your order. We also hand you duplicate receipt from the R. R. co. for the said bonds. As we detached all the coupons due January 1st, 1873, from said bonds, the county will owe the Cairo and Vincennes Railroad Company sixteen days' interest on same, which amounts to three hundred and thirty-seven $\frac{82}{100}$ dollars. Trusting our action in behalf of this trust may meet your approval, we are your obedient servants,

S. STAATS TAYLOR,
A. B. SAFFORD,
PAUL G. SCHUH,
Trustees.

And afterwards, to wit, on Thursday, the 6th day of March, 1873, of the regular March term of said Alexander County county court, all officers of court being present, the following further proceedings were had in the matter of the Cairo and Vincennes Railroad:

It is considered and ordered by the court that the receipt of William Martin, county treasurer of this county, to A. B. Safford, S. Staats
69 Taylor, and Paul G. Schuh, trustees, to hold the bonds issued by the county of Alexander to the Cairo and Vincennes Railroad Company for five one thousand dollar bonds of said county, numbered from 96 to 100, both inclusive, with forty coupons to each bond attached, and also for 95 coupons of forty dollars each, numbered from 1 to 95 inclusive, be approved and filed. The report of Paul G. Schuh, S. Staats Taylor, and A. B. Safford, trustees, &c., that they had delivered to William Martin, county treasurer of Alexander County, five one thou-

sand dollar bonds, numbered from 96 to 100, both inclusive, and also 95 coupons of $40 each, the bonds being for one hundred thousand dollars capital stock of the Cairo and Vincennes Railroad, &c., &c., being examined by the court, and the court being fully advised in the premises, it is ordered that the said report be approved and filed.

Court adjourned until to-morrow morning at 9 o'clock.

FRIDAY MORNING, *March 7th*, 1873.

70 Court met pursuant to adjournment, all officers present, when the following further proceedings were had in the matter of the Cairo and Vincennes Railroad:

On this day comes William Martin, treasurer of Alexander County, and presents to this court five bonds of the denomination of one thousand dollars each, numbered from 95 to 100, both inclusive, together with all the coupons, forty in number on each bond and numbered from 1 to 40, both inclusive, issued to the Cairo and Vincennes Railroad Company by this court, in consideration of which bonds the stock in the said railroad for one hundred thousand dollars has been transferred to said railroad company by the trustees in whose hands said bonds were placed, according to the original agreement between the county court of this county and said railroad company; therefore it is ordered that said bonds and coupons be canceled (which was done in open court), and that the county treasurer keep them on file in his office.

71 STATE OF ILLINOIS,
Alexander County, ss:

I, Sam'l J. Humm, county clerk in and for the county and State aforesaid, do hereby certify that the foregoing orders of the county court of Alexander County in the matter of the Cairo and Vincennes Railroad are true and correct copies of said orders as they appear now of record in my office.

In testimony whereof I hereunto set my hand and the official seal of said court, at office in the city of Cairo, this 6th day of Oct., A. D. 1881.

[SEAL.] SAM'L J. HUMM.
County Clerk.

72 Fourth. Certificate of auditor in words and figures following, to wit:

Certificate of order.

STATE OF ILLINOIS,
County of Alexander:

CAIRO, *Dec'r 26th*, 1872.

To the auditor of public accounts of the State of Illinois:

SIR: I hereby certify that the following described bonds are entitled to registration in your office under the provisions of the act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869; the bonds being numbered from No. one to No. 95, incl., for $1,000 each, dated Jan'y 1st, 1872, and payable July 1st, 1892, being in all 100 bonds, and amounting to $100,000,

and bearing interest at the rate of eight per cent. per annum, payable semi-annually on the 1st days of January and July. These bonds are issued by the county of Alexander, in the county of Alexander and State of Illinois, to the Cairo and Vincennes Railroad Company, under and by authority of the provisions of an act entitled "Subscriptions in aid
73 of railroads," approved Nov'r 16th, 1849, and subsequent acts and by a vote of the people of said county, at an election held on the 16th day of July, 1867 (1869), and I, as judge of the county court of said county, do hereby certify that all the preliminary conditions in the act in force April 16th, 1869, required to be done to authorize the registration of these bonds and to entitle them to the benefits of said act last referred to have been fully complied with to the best of my knowledge and belief.

F. BROSS, *Co. Judge.*

Subscribed and sworn to by the said F. Bross before me this 26th day of December, A. D. 1872.

JACOB G. LYNCH,
Co. Clerk.

AUDITOR'S OFFICE, ILLINOIS,
Springfield, July 11th, 1879.

I, Thomas B. Needles, auditor of public accounts of the State of Illinois, do hereby certify that the foregoing and annexed instrument is a true, full, and correct copy of the certificate of F. Bross, county judge of the
74 county of Alexander, State of Illinois, in relation to the registration of bonds issued by the county of Alexander in aid of the Cairo and Vincennes R. R., dated Dec. 28th, 1872, now on file in and forming part of the records of this office.

In testimony whereof I hereunto subscribe my name and affix the seal of my office at Springfield the day and year first above written.

[L. S.] T. B. NEEDLES,
Auditor Public Accounts.

Fifth. The charter and amendments of the Cairo and Vincennes R. R. Co., found in 2nd vol. Private Laws of Ills., 1867, page 558, and 3rd vol. Private Laws, 1869 page 255.

To the introduction of which coupons, bonds, transcript of record, and auditor's certificate as evidence, the defendant then and there at the time severally objected, as follows, to wit:

First. To said coupons and bonds severally and respectively, because—

1. The genuineness of the signatures to said coupons and bonds,
75 severally and respectively, had not been proven and due execution thereof shown.

2. That the proofs showed that the only vote had by the people prior to constitution of 1870 was a vote for a subscription, and that the bonds to Cairo and Vincennes Railroad Company were in fact issued as a donation.

3. That the bonds having been issued since the adoption of constitution of 1870 the recitals therein could not be received as evidence to establish a prior vote of the people, nor estop defendant from showing, as the proofs

showed, that the vote was for a subscription and the bonds were issued as a donation.

4. That no authority had been shown authorizing the issuance of the bonds.

Second. To said transcript of record in so far as the same was offered to bind defendant by any recitals made therein since constitution of 1870.

Third. To said auditor's certificate in so far as offered to conclude the defendant by any statements therein made since constitution of 1870.

76 But the court overruled said objections severally and respectively, and admitted in evidence said bonds and coupons, transcript of record, auditor's certificate, charter, and amendments. To which action of the court in overruling said objections, severally and respectively, and admitting in evidence said coupons, bonds, transcript of record, and auditor's certificate, severally and respectively, said defendant then and there excepted. This was all the evidence offered by either party, except that it was admitted that the said transcript of record of county court contained and showed the only action taken by the county court or the people with reference to the issuance of bonds to the Cairo and Vincennes Railroad Company. And upon the evidence aforesaid the court specially found:

1st. That the said coupons and bonds offered in evidence had been duly executed and delivered by defendant.

2nd. That they had been so executed and delivered as a subscription to the capital stock of the Cairo and Vincennes Railroad Company in

77 pursuance of and according to a vote of the people had under existing laws prior to the adoption of the constitution of 1870.

And upon the special findings aforesaid the court thereupon found the issues for plaintiff, and assessed his damages at the amount of said coupons, with six per cent. interest thereon from their maturity. To which special findings, general finding, and assessment of damages the defendant then and there severally and respectively excepted and objected as follows:

1st. As to said special finding as to the genuineness, due execution, and delivery of said coupons and bonds respectively offered in evidence; that the same was not justified by the proofs.

2nd. As to said special finding as to said coupons and bonds having been executed and delivered as a subscription to the capital stock of the Cairo and Vincennes Railroad Company in pursuance of and according to a vote of the people had under existing laws prior to the adoption of the constitution of 1870; that the same was not justified by the proofs.

78 3rd. As to said general finding of issues for plaintiff; that the same was not justified by the proofs, and was contrary to the evidence.

4th. As to said assessment of damages; that the same was excessive to the amount of the interest included therein, because no demand of payment had been proven and no interest recoverable under the laws of Illinois.

But the court overruled said exceptions and objections severally and respectively, and gave judgment for plaintiff upon said findings; to all of which, severally, respectively, and to the said judgment as rendered by the court, the defendant then and there at the time objected and excepted; and inasmuch as the above matters and things do not appear of record the defendant tenders this, its bill of exceptions, within the time allowed by the court, and prays that the same may be signed and sealed by said judge and

made a part of the record in this case; and it is accordingly done this 3rd day of August, 1882.

S. H. TREAT,
Judge. [SEAL.]

(Indorsed:) Filed October 7th, 1882. J. A. Jones, clerk.

79 *Certificate of clerk.*

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

I, J. A. Jones, clerk of the circuit court of the United States in and for the southern district of Illinois, do hereby certify the foregoing is a true and correct copy of all the papers filed and proceedings thereon had in a certain cause wherein John F. Kimball is plaintiff and The County of Alexander is defendant, as fully and completely as the same appear of file and record in my said office.

In witness whereof I have hereunto set my hand and seal of said court at Springfield, in said district, this eleventh day of October, in the year of our Lord one thousand eight hundred and eighty-two, and of our Independence the one hundred and seventh year.

[SEAL.] J. A. JONES, *Clerk.*

80 *Citation.*

Supreme Court of the United States.

THE UNITED STATES OF AMERICA, *ss:*

To John F. Kimball, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Illinois, wherein The County of Alexander (in the State of Illinois) is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties aforesaid in that behalf.

Witness, the Hon. S. H. Treat, district judge of the United States for the southern district of Illinois, at Springfield, in said district, this 2d day of October, in the year of our Lord 1882, and of our Independence the 107th year.

S. H. TREAT,
Dist. Judge U. S., South'n Dist. of Ill's.

81 (Indorsed:) Supreme Court of the United States. County of Alexander, plaintiff in error, vs. John F. Kimball. Citation.

I hereby accept service of this citation. Oct. 2d, 1882.

T. C. MATHER,
Att'y of Kimball.

(Indorsement on cover:) No. 1091. The County of Alexander, plaintiff in error, vs. John F. Kimball. S. Illinois C. C. U. S. Filed 16th October, 1882.